VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

In the

United States Court of Appeals

For the Seventh Circuit

No. 13160

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APPENDIX.

1

In The United States District Court

(Caption—No. 56 C 323)

STATEMENT REQUIRED BY RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

1. The style of the court and the title of this case are as shown in the above heading.

2. This action was commenced on February 16, 1956 by the filing of the complaint.

3. The names of the parties hereto are as follows:

(a) *Plaintiff-Appellant*: Parmelee Transportation Company, a Delaware Corporation.

(b) *Defendants-Appellees*: John L. Keeshin, Hugh W. Cross, Howard E. Simpson, Paul E. Feucht, Wayne A. Johnston, Fred G. Gurley, Railroad Transfer Service, Inc., a Delaware Corporation, the Atchison, Topeka and Santa Fe Railway Company, a Kansas Corporation, The Baltimore and Ohio Railroad Company, a Maryland Corporation, Chicago and North Western Railway Company, a Wisconsin Corporation, Illinois Central Railroad, an Illinois Corporation, The New York Central Railroad Company, an Illinois, New York, Ohio, Indiana, Pennsylvania and Michigan Corporation, The Pennsylvania Railroad Company, a Pennsylvania Corporation, and John Doe.

4. The several dates when the respective pleadings were filed are as follows:

Plaintiff's complaint filed February 16, 1956; Amendments to Complaint filed May 14, 1959. Answers to complaint and the amendments to complaint were respectively filed as follows:

(a) Hugh W. Cross on April 25, 1956 (complaint only).

(b) John L. Keeshin and Railroad Transfer Service, Inc., on October 19, 1956 and May 25, 1959.

(c) Howard A. Simpson, Paul E. Feucht, Wayne A. Johnston, Fred G. Gurley, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Chicago, and North Western Railway Company, Illinois Central Railroad, and The Pennsylvania Railroad Company on October 19, 1956 and May 14, 1959.

(d) The New York Central Railroad Company on October 19, 1956 and June 9, 1959.

5. No defendant was arrested, no bail was taken, and no property was attached.

6. Time when the trial was had: The trial took place before the court and jury on April 26, 27, 28, 29, May 2, 3, 4, 5, 6, 9, 10, 1960.

7. Name of the trial judge: Honorable Julius H. Miner.

8. Nature of verdict rendered by the jury:

Jury verdict for defendants on special interrogatory with respect to the issue of public injury.

9. Date of final judgment: June 30, 1960.

10. Notice of appeal, together with bond for costs, filed July 20, 1960.

Parmelee Transportation Company,
a Delaware Corporation,
By *Thomas C. McConnell*
Thomas C. McConnell

Lee A. Freeman
Lee A. Freeman
Herbert B. Lazarus
Herbert B. Lazarus
Its Attorneys

Thomas C. McConnell,
McConnell, Paschen & Curtis,
134 South LaSalle Street,
Chicago 3, Illinois
Lee A. Freeman,
105 South LaSalle Street,
Chicago 3, Illinois
Herbert B. Lazarus,
1790 Broadway,
New York, New York

3 PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of June, being the 6th day thereof, in the Year of Our Lord One Thousand Nine Hundred Sixty and of the Independence of the United States of America, the 184th Year.

Present:

Honorable William J. Campbell, Chief District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable Walter J. La Buy, District Judge
Honorable J. Sam Perry, District Judge
Honorable Julius J. Hoffman, District Judge
Honorable Julius H. Miner, District Judge
Honorable Edwin A. Robson, District Judge

Also Present:

Honorable Albert B. Maris,	Senior United States Circuit Judge for the Third Circuit
Honorable Omer Poos,	United States District Judge for the Southern District of Illinois
Honorable John J. Kilkenny,	United States District Judge for the District of Oregon

sitting pursuant to designation.
Roy H. Johnson, Clerk
William W. Kipp, Sr., Marshal
Thursday, June 30, 1960
Present: Honorable Julius H. Miner,
Trial Judge

4

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

5 COMPLAINT
(Filed Feb. 16, 1956)

PARMALEE TRANSPORTATION COMPANY, a Delaware Corporation, Plaintiff, by its attorneys, brings this action against the defendants, and complains and alleges as follows:

I.

JURISDICTION.

1. This complaint is filed and proceedings are instituted against the defendants under §§ 4 and 16 of the Act of Congress of October 15, 1914, Chap. 323, 38 Stat. 6 731 and 737, as amended, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and

Monopolies, and for Other Purposes", commonly known as the Clayton Act, 15 U.S.C. §§ 15 and 26, in order to recover the damages sustained by plaintiff by reason of the defendants' violations of §§ 1 and 2 of the Act of Congress of July 2, 1890, Chap. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, 15 U.S.C. §§ 1 and 2, and to have injunctive relief against said unlawful conduct by defendants.

2. By virtue of § 14 of the Clayton Act, 15 U.S.C. § 24, the violations of the Sherman Act by the corporations hereinafter described are deemed also to be violations by the individual directors, officers, or agents of such corporations who authorized, ordered, or did any of the acts constituting in whole or in part such violations.

II.

PLAINTIFF.

3. Plaintiff is a Delaware corporation, qualified to do business in Illinois, with its principal place of business in Chicago, Illinois.

III.

DEFENDANTS.

4. John L. Keeshin (hereinafter called "Keeshin") resides in River Forest, Illinois. Keeshin organized, controls and is one of the directors of Railroad Transfer Service, Inc.

5. Hugh W. Cross (hereinafter called "Cross") resides in Jerseyville, Illinois. He was a member of the Interstate Commerce Commission from April 11, 1949 until November 23, 1955, and was Chairman of the Interstate Commerce Commission from July 1, 1955 until November 23, 1955.

6. Howard E. Simpson (hereinafter called "Simpson") resides in Baltimore, Maryland. He is the president and a director of The Baltimore and Ohio Railroad Company.

7. Paul E. Feucht (hereinafter called "Feucht") resides in Barrington, Illinois. He is the president and a director of the Chicago and North Western Railway Company.

8. Wayne A. Johnston (hereinafter called "Johnston") resides in Flossmoor, Illinois. He is the president and a director of the Illinois Central Railroad.

9. Fred G. Gurley (hereinafter called "Gurley") resides in Winnetka, Illinois. He is the president and a director of The Atchison, Topeka and Santa Fe Railway Company.

10. Railroad Transfer Service, Inc. (hereinafter called "Transfer") is a Delaware corporation with its principal place of business in Chicago, Illinois. Transfer was formed for the purpose of effectuating the conspiracy hereinafter described.

11. Each of the following defendant corporations (hereinafter called "defendant railroads") owns and operates a railroad having a terminus in Chicago, Illinois, transacts business and is found in the Northern District of Illinois:

(a) The Atchison, Topeka and Santa Fe Railway Company is a Kansas corporation.

(b) The Baltimore and Ohio Railroad Company is a Maryland corporation.

8 (c) Chicago and North Western Railway Company is a Wisconsin corporation.

(d) Illinois Central Railroad is an Illinois corporation.

(e) The New York Central Railroad Company is an Illinois, New York, Ohio, Indiana, Pennsylvania and Michigan corporation.

(f) The Pennsylvania Railroad Company is a Pennsylvania corporation.

12. The defendant WESTERN RAILROAD PASSENGER ASSOCIATION, CHICAGO TERMINAL LINES (formerly known as Western Passenger Association, Chicago Terminal Lines and hereinafter called the "RAILROAD ASSOCIATION") is an unincorporated voluntary association of railroads whose lines terminate in Chicago and of depot corporations with railroad terminals in Chicago, organized for the purpose, among others, of dealing with terminal and passenger and baggage transfer problems and procedures in the Chicago terminal area. The RAILROAD ASSOCIATION transacts business and is found in the Northern District of Illinois. Its members consist of the following twenty-one railroads:

The Atchison, Topeka and Santa Fe Railway Company
The Baltimore and Ohio Railroad Company
The Chesapeake and Ohio Railway Company
Chicago and Eastern Illinois Railroad Company
Chicago and North Western Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago Great Western Railway Company
Chicago, Indianapolis and Louisville Railway Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, North Shore and Milwaukee Railway
Chicago, Rock Island and Pacific Railroad Company
Chicago, South Shore and South Bend Railroad
Erie Railroad Company
Grand Trunk Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad
Minneapolis, St. Paul and Sault Ste. Marie Railroad Company
The New York Central Railroad Company
The New York, Chicago and St. Louis Railroad Company
The Pennsylvania Railroad Company
Wabash Railroad Company

and the following three depot corporations:

The Baltimore and Ohio Chicago Terminal Railroad Company

The Chicago and Western Indiana Railroad Company

The Chicago Union Station Company

(The railroads and depot corporations forming the Western Railroad Passenger Association, Chicago Terminal Lines will hereinafter be referred to as "Chicago Terminal Lines".)

13. On information and belief it is alleged that John Doe and other persons to the plaintiff presently unknown were parties to the conspiracy hereinafter alleged and should be made defendants to this action after their identity becomes known.

10 IV.

NATURE OF TRADE AND COMMERCE INVOLVED.

14. There are eight railroad stations in the city of Chicago at which persons board or disembark from trains engaged in interstate passenger transportation. The connecting railroads involved in such interstate trips through Chicago in most instances do not operate into the same terminal station in said city. A large number of the persons making interstate railroad trips which carry them through Chicago must disembark from a train at one of said eight railroad stations and travel to another station some two blocks to two miles distant in order to board another train. The transportation and transfer of such passengers and their baggage from and between railroad stations in Chicago is hereinafter referred to as "station transfer service".

15. In addition, each day large numbers of persons making interstate railroad trips arrange for the pick-up of their trunks and other baggage at points within the Chicago metropolitan area for transport to outgoing rail-

road stations where they are checked through to destinations; and conversely a large number of such persons arrange for the delivery of such trunks and other baggage after interstate railroad trips, from incoming railroad stations to points of destination within the Chicago metropolitan area. These services will hereinafter be referred to as "pick-up and delivery service".

16. The business of transporting such passengers and their baggage from and between stations in Chicago and of providing pick-up and delivery service is part of the trade or commerce among the several states protected by §§ 1 and 2 of the Sherman Act.

17. A passenger making an interstate railroad trip through Chicago customarily contracts with one railroad for a single joint fare to cover the entire trip, including the cost of transporting the passenger and his baggage in Chicago from the incoming train to the outgoing train. Railroad tickets issued for such trips through Chicago include transfer coupons for station transfer service. For over one hundred years the defendant railroads and their predecessors have paid other persons to perform this station transfer service for them.

18. Prior to June 1, 1955, any person willing and able to perform this station transfer service was free to negotiate with the railroads for this business, and the railroads were free to contract with the person or persons who offered to provide satisfactory station transfer service at the lowest cost.

19. The character and cost of the services performed by persons engaged in the business of transporting interstate railroad passengers and their baggage from or between railroad stations in Chicago and of performing pick-up and delivery service in the Chicago metropolitan area for interstate trips are matters in which the traveling public has a pecuniary interest. Increases in the cost of such services ultimately will increase the passenger's cost

of interstate rail transportation. Any decrease in the quality or extent of such services is prejudicial to the interests of the traveling public.

20. Extensive station transfer and pick-up and delivery services were operated by plaintiff in Chicago. Such services were originally established by Frank Parmelee in 1853. Prior to September 30, 1955, each of the Chicago Terminal Lines engaged plaintiff or its predecessors and others to perform station transfer services. In an effort at all times to provide adequate service at the lowest cost, and thus to offer the railroads and the traveling public a better bargain than its competitors or potential com-
12 petitors could offer, the plaintiff and its predecessors designed and acquired special vehicles, buildings and other facilities, built special structures at depots, hired and trained personnel in specialized skills, and from time to time invested substantial sums of money in order to maintain and improve the character of plaintiff's operations, all for the purpose of meeting the special requirements of the Chicago Terminal Lines, including the defendant railroads, and of the traveling public. Throughout this period of over 100 years, the plaintiff and its predecessors engaged in this business, and provided the railroads and the traveling public with dependable service. Plaintiff is ready, willing and able, and has offered to continue to engage in the station transfer and pick-up and delivery business on terms and conditions favorable to the railroads and to the traveling public, but has been prevented from so doing from and after September 30, 1955 by the conspiracy hereinafter described.

21. In addition to station transfer and pick-up and delivery services, plaintiff performed various other services for the railroads and the traveling public. Plaintiff derived revenue and profit from the performance of these other services.

22. The outstanding history of efficient and reliable service performed by plaintiff and its predecessors for more than a century in Chicago caused persons throughout the country to become familiar with the name "Parmelee" as a symbol of a type of transportation known for its integrity, efficiency and fair dealing. Prior to September 30, 1955, the good will and reputation associated with the name "Parmelee" was unique and enabled plaintiff to earn substantial sums of money in the operation of its aforesaid business. Plaintiff's property right in the good will attached to said name and reputation prior to September 30, 1955 was of great monetary value.

13 23. On or about March 1951, the Railroad Association established a committee consisting of the six defendant railroads and delegated to said committee the authority and responsibility of reviewing the cost to the Chicago Terminal Lines of providing motor vehicle station transfer service, of soliciting motor vehicle operators in addition to plaintiff to submit proposals to render station transfer and pick-up and delivery services, and of negotiating with such operators on behalf of the Chicago Terminal Lines, all for the purpose of keeping down the cost to the railroads of providing such services. Said six defendant railroads accepted said delegation of authority, and agreed to report their recommendations to said Chicago Terminal Lines from time to time.

24. During 1951 and thereafter until the conspiracy hereinafter alleged was formed and effectuated, said defendant railroads, acting on behalf of the Chicago Terminal Lines, from time to time did solicit and negotiate with various motor vehicle operators with respect to the rendition of station transfer and pick-up and delivery services, and did find that plaintiff was willing and able to provide said services at a lower cost and on more favorable terms and conditions than any competitor or potential competitor of plaintiff.

25. Prior to October 1, 1955, neither KEESHIN, CROSS nor TRANSFER had ever engaged in the rendition of station transfer or pick-up and delivery services in Chicago or elsewhere.

14 V.

POWERS AND DUTIES OF MEMBERS OF THE INTERSTATE COMMERCE COMMISSION.

26. The Interstate Commerce Commission, (hereinafter sometimes referred to as "Commission") created and established by Act of Congress, is vested with comprehensive regulatory powers over the operations of interstate railroads, motor carriers, water carriers and other forms of public tansportation. All of the Chicago Terminal Lines, including the defendant railroads, are subject to the aforesaid regulatory jurisdiction of the Commission. Within the past five years matters of great importance to the defendant railroads and to the public have been pending before and have been decided by the Commission, and matters of great importance to the defendant railroads and to the public may by law be brought before the Commission for decision or action at any time.

27. The operation of motor vehicle station transfer services in the Chicago terminal area pursuant to contract with the railroads is exempt from the Commission's regulatory authority except with respect to maximum hours of employee work.

28. Under the declared policy of Congress, and usages and regulations developed by the Commission, members of the Commission are under a duty to avoid private dealings with railroads which would impair their ability to deal impartially with persons subject to the jurisdiction of said Commission.

29. In consequence, defendant CROSS, while a member of the Commission was under a duty to refrain from influ-

encing or attempting to influence any representative of the defendant railroads to do business with, or to refuse to do business with, any person engaged in or seeking to engage in the business of station transfer and pick-up and delivery services in Chicago.

30. Each of the other defendants well knew of the aforesaid duty and obligation of defendant Cross as a member of the Commission, and each of said other defendants was under a duty to refrain from offering or promising defendant Cross anything of value to induce him to breach his duties as a member of the Commission and to refrain from attempting to influence defendant Cross to do, or omit to do, or fail to do impartially, any act in his official capacity, by granting private requests made by, or by furthering the personal interests of, said defendant Cross.

VI.

OFFENSES CHARGED.

31. Prior to March 15, 1955, and continuing to and including the date of the filing of this complaint, defendants, together with other persons to the plaintiff unknown, have been and are now engaged in an unlawful combination, conspiracy and concert of action to eliminate all competition for contracts or arrangements with the railroads and depot corporations comprising the Chicago Terminal Lines to transport interstate passengers and their baggage from or between railroad stations, or between railroad stations and steamship docks in Chicago, to eliminate all competition for the rendition of pick-up and delivery services, to foreclose all future competition for such contracts and services, and to restrain and monopolize the aforesaid interstate commerce in violation of §§ 1 and 2 of the Sherman Act.

32. Prior to March 15, 1955, and continuing thereafter, defendants, Cross, Keeshin and persons to the plaintiff

unknown conceived, planned, entered into and participated in said combination, conspiracy and concert of action, among the substantial terms of which have been and are: that Cross, in exchange for Keeshin's promise of a valuable consideration and in violation of his aforesaid duties, would influence, induce and persuade defendants Simpson, Feucht, Johnston and Gurley, and through them the defendant railroads and the defendant Railroad Association, to join and participate in said unlawful combination, conspiracy and concert of action by representing to them that he would benefit personally and derive value therefrom at a future date and that he would continue to exercise his powers as a member of the Commission until such future date; that defendants Simpson, Feucht, Johnston and Gurley and the defendant railroads, well knowing that it was improper and illegal for defendant Cross to attempt to persuade any of them to do so and in order to induce Cross to give favorable consideration and to refrain from giving unfavorable consideration to matters of importance to defendant railroads which were then pending or which might by law be brought before the Commission, would cause the Chicago Terminal Lines to eliminate plaintiff from the business of performing station transfer and pick-up and delivery services for them in Chicago and to grant an exclusive five year contract to a corporation to be formed by defendant Keeshin, regardless of whether the cost and terms proposed by Keeshin for such services were less favorable than could be obtained by them as a result of free competition for such contract; and that the defendant Transfer would be organized by Keeshin pursuant to and in order to carry out and effectuate said unlawful combination, conspiracy and concert of action and would participate therein.

33. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and other persons to the plaintiff unknown, by agreement and

concert of action, have done the things which, as here-
17 inbefore alleged, they conspired to do, including but not limited to the following acts:

(a) Between March 15, 1955 and June 13, 1955, defendants KEESHIN and CROSS and other persons to the plaintiff unknown, conferred with one another repeatedly in order to work out the terms and conditions of the aforesaid conspiracy and the methods of accomplishing its objectives.

(b) During said period, defendant CROSS conferred with defendants SIMPSON, JOHNSTON and FEUCHT and induced them to cause defendant railroads, and through them the Chicago Terminal Lines, to discontinue their business dealings with plaintiff without reasonable cause, and to accept a proposal for a five-year exclusive contract with a corporation to be formed and designated by defendant KEESHIN.

(c) On or about June 1, 1955, defendants SIMPSON, FEUCHT, JOHNSTON and GURLEY, as well as other executives of defendant railroads, caused their subordinates and representatives on said committee of six railroads to recommend to and thus cause the Chicago Terminal Lines to accept the proposal submitted by defendant KEESHIN and to cease doing business with plaintiff regardless of whether plaintiff proposed to continue to do business with the Chicago Terminal Lines at a lower cost and on terms more favorable to them than could be obtained from KEESHIN or any competitor or potential competitor of the plaintiff.

(d) On June 13, 1955, agents of the six defendant railroads met with the representatives of the other railroads and depot corporations comprising the Chicago Terminal Lines and recommended the elimination of plaintiff from the business of rendering station transfer and pick-up and delivery services in
18 Chicago and the acceptance of an exclusive five year

contract with a corporation to be formed by KEESHIN. By reason of the authority delegated to the committee of six defendant railroads to deal with the Chicago transfer problems, the recommendation thus made was relied upon and accepted by the other railroads and depot corporations comprising the Chicago Terminal Lines and plaintiff was notified by the RAILROAD ASSOCIATION that its services in Chicago would no longer be used after September 30, 1955.

(e) On or about July 25, 1955, defendant TRANSFER was incorporated.

(f) On or about September 15, 1955, acting for and on behalf of the Chicago Terminal Lines, Earl B. Padrick, as their agent, executed a contract dated as of October 1, 1955, granting TRANSFER the exclusive privilege of transporting passengers and baggage between stations and of performing the pick-up and delivery service in Chicago for a fixed term ending September 30, 1960 on terms and conditions more costly and less favorable to said railroads than could have been obtained from plaintiff. Said agreement did not accord any of the Chicago Terminal Lines the free and unrestrained right to take independent action with respect to any matter covered by the agreement.

(g) By said agreement of September 15, 1955, the Chicago Terminal Lines, including defendant railroads, agreed that it was their collective purpose and intention to the maximum extent possible to limit the entire field of passenger and baggage transportation between railroad terminal stations and between railroad terminal stations and steamer docks in Chicago exclusively to TRANSFER, and to act in concert to recommend and refer all their passengers and prospective passengers to TRANSFER, as the sole and exclusive baggage transport service which could be relied upon for

prompt, safe, satisfactory and economical baggage transfer service in the Chicago terminal area. Such collective undertaking was made when none of the Chicago Terminal Lines including the defendant railroads had any knowledge as to whether TRANSFER would or could merit such reference and recommendation by them and when they all knew that plaintiff did merit favorable reference and recommendation by reason of past services.

(h) On or about September 29, 1955 TRANSFER qualified to do business in Illinois, but did not, and still has not, obtained the public passenger vehicle licenses required by the City of Chicago for companies operating terminal vehicles for the transportation of passengers between railroad stations in the Chicago terminal area. Since October 1, 1955, TRANSFER has used vehicles and has conducted its operations in a manner that violated and now violates the safety requirements of the Chicago Public Passenger Vehicle Ordinance (Chapter 28 of the Chicago Municipal Code).

(i) On October 1, 1955, pursuant to said contract, TRANSFER entered upon the business of transporting passengers and their baggage between railroad terminal stations in Chicago and of performing pick-up and delivery service in the Chicago metropolitan area. Such business was commenced and the services are being conducted by TRANSFER with only a nominal capital investment. The services performed by TRANSFER pursuant to said contract have been and are more costly to said railroads and less extensive and valuable than the services previously performed by plaintiff and which plaintiff had offered to continue to perform.

(j) Since October 1, 1955, the defendant railroads have employed all available means including the violation of shippers' instructions to divert baggage pick-up and delivery business to TRANSFER and away from

plaintiff, and otherwise to interrupt and impede the offering and rendition of plaintiff's public transportation services.

(k) On and after October 1, 1955, the defendant railroads and the other railroad and depot corporations comprising the Chicago Terminal Lines, have given defendant TRANSFER extensive assistance in the rendition of station transfer and pick-up and delivery services, by granting defendant TRANSFER financial aid and utilization of railroad employees and facilities at an expense and cost to the railroads involved and at an advantage and savings of cost and expenses to TRANSFER, which far exceeded the aid and assistance previously afforded plaintiff or which would have been afforded plaintiff if it had continued to do business with the Chicago Terminal Lines.

(l) Prior to November 23, 1955, defendant CROSS did exercise his power as a member and as Chairman of the Commission in favor of other defendants in matters pending before and subjects over which the Commission had supervision.

(m) On November 23, 1955, defendant CROSS resigned his position as Chairman of the Commission as a result of an investigation of his conduct by the United States Senate Committee on Government Operations, Permanent Subcommittee on Investigations and prior to the announced institution of public hearings by said Subcommittee. Such resignation was for the purpose of concealing the terms of the conspiracy.

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VII.

EFFECTS OF THE CONSPIRACY.

34. The combination and conspiracy hereinbefore alleged have had as intended by the defendants, the following effects, among others:

(a) Competition for the business of transporting interstate passengers and their baggage from and between railroad stations in Chicago has been substantially eliminated and plaintiff has been improperly excluded from and deprived of the opportunity of fairly competing for such business;

(b) Competition for the business of transporting interstate passengers and their baggage between railroad stations and steamer docks in Chicago has been foreclosed;

(c) Competition for the business of pick-up and delivery of baggage and related transportation services in the Chicago metropolitan area has been unduly restrained;

(d) The Chicago Terminal Lines have entered into a contract to pay TRANSFER a higher price over the next five years for the performance of station transfer services and on terms less favorable than the price and terms at which plaintiff had offered to perform said services;

(e) The services being performed by TRANSFER pursuant to said contract are less extensive and valuable than the services previously performed by plaintiff, and which plaintiff had offered to continue to perform;

(f) Unlawful restraints have been and are now being imposed upon plaintiff in connection with the business of transporting non-coupon holding pas-
22 sengers from and between railroad terminal stations, and of performing the pick-up and delivery of baggage and other services;

(g) The RAILROAD ASSOCIATION and the defendant railroads in furtherance of said combination and conspiracy, have been and now are wrongfully impairing the reputation of plaintiff with the public for satisfactory passenger and baggage transfer services;

(h) The RAILROAD ASSOCIATION and the defendant railroads acting in concert in furtherance of said combination and conspiracy, are aiding and abetting TRANSFER in the commercial operation over the streets and public ways of Chicago of unlicensed terminal vehicles in violation of the Chicago Municipal Code; and in the use of vehicles and their operation contrary to the safety requirements of said Chicago Municipal Code;

(i) The ability of defendant Cross to perform his official duties in a fair, impartial and efficient manner was impaired and the public and the Commission were substantially deprived of the value of defendant Cross' services.

35. By reason of the unlawful acts of the defendants herein complained of, and as a result of said conspiracy and combination to restrain and monopolize interstate trade and commerce in the business of furnishing station transfer and pick-up and delivery services in Chicago, plaintiff has been grievously injured and damaged in its business and property. Plaintiff has been deprived of substantial profits which it would have earned in its business of transporting passengers and their baggage from and between railroad terminal stations and performing the pick-up and delivery of baggage service and other related services if competition for such business in Chicago had not been unlawfully restrained and monopolized by
23 the defendants as aforesaid. The good will and value of plaintiff's aforesaid business as a going concern and the business reputation associated with the name "Parmelee" have been substantially and permanently impaired and injured. Plaintiff has been subjected to substantial operating losses in the conduct of its aforesaid business since October 1, 1955. Plaintiff has sustained actual damage in its business and property by reason of defendants' violations of the antitrust laws in excess of

Six Million Four Hundred Thousand Dollars ($6,400,000.00). Plaintiff's total damages, being treble damages as provided in the Clayton Act, are in excess of Nineteen Million Two Hundred Thousand Dollars ($19,200,000.00).

36. The aforesaid conspiracy is continuing, and will continue to cause irreparable loss and damage to the plaintiff and to the public unless equitable relief is granted. No complete and adequate remedy at law exists.

WHEREFORE, the plaintiff asks that summons issue against the defendants named herein, requiring them and each of them to appear in answer to this complaint within the time fixed by the rules of this Court and that after a hearing on the issues joined:

(A) A joint and several judgment be entered against the defendants in the total amount of Nineteen Million Two Hundred Thousand Dollars ($19,200,000.00) in favor of plaintiff;

(B) In addition thereto there be allowed by the Court to plaintiff its reasonable attorneys' fees and cost of suit as provided by statute;

(C) The aforesaid combination and conspiracy in restraint of trade and conspiracy to monopolize be adjudged and decreed to be unlawful, and each of the
24 defendants be perpetually enjoined and restrained from continuing the aforesaid combination, conspiracy and concert of action;

(D) Said contract entered into on September 15, 1955 be declared to be illegal and of no force and effect;

(E) Plaintiff have such further, general and different relief as the nature of the case may require and the Court may deem proper in the premises.

/s/ Lee A. Freeman

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Chicago 3
ANdover 3-6939
Attorney for Plaintiff,
PARMELEE TRANSPORTATION COMPANY

HERBERT B. LAZARUS
1501 Broadway
New York 36, New York
JOHN PAUL STEVENS
105 South LaSalle St.
Chicago 3, Illinois.
Of Counsel

Jury Demand.

The plaintiff pursuant to Rule 38 of the Rules of Civil Procedure for the District Courts of the United States demands a trial by jury of all issues tendered by the above and foregoing complaint, except the issue of whether or not the plaintiff is entitled to the equitable injunctive relief prayed.

/s/ Lee A. Freeman
LEE A. FREEMAN
Attorney for Plaintiff.

25

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

MOTION OF DEFENDANTS RAILROAD TRANSFER SERVICE, INC., A CORPORATION AND JOHN L. KEESHIN, TO DISMISS THE PLAINTIFF'S COMPLAINT TO STRIKE CERTAIN PARTS OF COMPLAINT.

(Filed April 23, 1956)

Now come the defendants Railroad Transfer Service, Inc., a corporation and John L. Keeshin by Albert J. Meserow, their attorney and moves to dismiss the complaint of Parmalee Transportation Company, plaintiff, and as grounds for such motion states:

1. The complaint fails to state any claim upon which relief can be granted for the reason that:

A. It affirmatively appears in said complaint that Railroad Transfer Service, Inc. a corporation did not come into existence until to-wit July 25, 1955, which was long after the award of the contract by the railroads to the defendant Keeshin, on June 13, 1955 and long after any alleged conspiracy took place; that it
26 did not start in business until October 1, 1956, long after any alleged conspiracy took place.

B. The allegations of said complaint fail to show any combination or action whereby the defendants monopolized or attempted to monopolize any part of the trade or commerce, in the transfer of passengers and baggage between stations in the terminal area of Chicago.

C. The complaint fails to allege any facts which show a combination or action whereby the defendants have unreasonably restrained interstate commerce.

D. The allegations of said complaint do not charge any combination conspiracy or restraint, in violation of the laws of the United States prohibiting Monopo-

lies and Combinations in Restraint of Trade such as to interfere with the interests of the public.

E. The said complaint fails to show that the alleged conspiracy was unlawful or illegal, nor does it set forth any allegations that show that the alleged concerted action was accomplished by unlawful means.

F. The granting of the privilege to Keeshin by the
27 railroads to transfer baggage and passengers between stations in the Chicago terminal area, was a lawful exercise of the rights of the defendants and is not in contravention of the Clayton Act or the Sherman Anti-Trust Act.

G. The complaint fails to set forth any allegations that show that the public interest has in any way been prejudiced.

H. That it affirmatively appears in said complaint that the railroads were free to contract with any person for the service of interstation transfer of passengers and baggage and that the railroads did in fact solicit bids from plaintiff and others, as well as defendant Keeshin; and that their decision to award the contract to Keeshin was the result of free and open competition and not in restraint of trade.

I. That the plaintiff is estopped from complaining against the defendants, because, if as plaintiff alleges, the operation of the transfer service by defendant Keeshin constitutes a monopoly and is in restraint of trade, as alleged by plaintiff, then plaintiff who carried on this service for a period of 102 years, is guilty of monopoly and restraint of trade, and it is therefore estopped from complaining of defendants in this cause.

28 J. That paragraphs 16, and 19, are mere conclusions and do not allege facts pertinent to the alleged cause of action.

K. That the clauses of the fourth sentence of paragraph 20, are immaterial.

L. That paragraph 21 is immaterial in that it does not factually describe the alleged "various other services" referred to, or state facts showing said services are in interstate commerce or affect interstate commerce.

M. That paragraph 22 does not set forth facts, but rather self-serving statements which are immaterial.

N. The allegations is paragraph 24 are a conclusion and argumentative.

O. The allegations of paragraphs 26 through 30 are immaterial.

P. The allegations of paragraph 31 are mere conclusions.

Q. That the allegations contained in paragraph 32 are vague, indefinite and are conclusions.

R. That paragraphs 33, (a), (b), (e), (f), (g), (h), (i), (k), and (l) and paragraph 36, are vague, and argumentative and contain legal conclusions and should be stricken.

S. There are no facts alleged which justify relief in equity by injunction.

29 T. That said complaint is in all other respects infirm and does not set forth any cause of action against the defendants.

Wherefore these defendants pray that the complaint of plaintiff be dismissed.

Albert Jameson
Attorney for Railroad Transfer
Service, Inc., a corporation and
John L. Keeshin, defendants

Albert J. Meserow
231 South LaSalle Street
Chicago 4, Illinois
State 2-8500

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In The United States District Court

* * (Caption—No. 56 C 323) * *

ANSWER.

(Filed April 25, 1956)

Now comes the defendant, Hugh W. Cross, by his attorneys, Charles F. Hough, William F. Coale, Jr. and Louis A. Witry, and in answer to the complaint says as follows:

First Defense.

The complaint fails to state a claim upon which relief can be granted.

Second Defense.

This defendant, without in any way waiving the benefit of the First Defense herein pleaded, but because of the fact that he was a public official and that there are serious but untrue charges made against him and others in the complaint, has in addition to the foregoing First Defense elected to answer such charges made in the complaint.

1-2. Defendant denies the conclusions of law contained in paragraphs 1 and 2 of the complaint insofar as said conclusions relate to the facts set forth in the complaint.

31 3-4. Defendant admits that Keeshin resides in River Forest, Illinois, but neither admits nor denies the other allegations contained in paragraphs 3 and 4 of the complaint for the reason that he has no knowledge sufficient to form an opinion or belief as to the truth of these allegations.

5-6. Defendant admits the allegations contained in paragraphs 5 and 6 of the complaint.

7. Defendant denies the allegations contained in paragraph 7 of the complaint except that he does admit that Paul E. Feucht was formerly president of the Chicago and North Western Railway Company and that he resides in Barrington, Illinois.

8-9. Defendant admits the allegations contained in paragraphs 8 and 9 of the complaint.

10. Defendant neither admits nor denies the allegation of paragraph 10 of the complaint that Railroad Transfer Service, Inc. is a Delaware corporation and that it has its principal place of business in Chicago, Illinois, for the reason that he is without knowledge sufficient to form a belief as to the truth thereof. Defendant denies the allegation of paragraph 10 of the complaint that Railroad Transfer Service, Inc. was formed for the purpose of effectuating the alleged conspiracy and states that no such conspiracy ever existed.

11. Defendant admits that each of the corporations named in paragraph 11 of the complaint owns and operates a railroad having a terminus in Chicago, Illinois,
32 transacts business and is found in the Northern District of Illinois; but he neither admits nor denies the allegations as to the state or states of incorporation of any of said corporations for the reason that he is without knowledge sufficient to form a belief as to the truth thereof.

12. Defendant neither admits nor denies the allegations contained in paragraph 12 of the complaint for the reason that he is without knowledge sufficient to form a belief as to the truth thereof.

13. Denying that the alleged conspiracy ever existed, he denies the allegations of paragraph 13.

14. Defendant admits the allegations contained in paragraph 14 of the complaint.

15. Defendant neither admits nor denies the allegations contained in paragraph 15 of the complaint for the reason that he is without knowledge sufficient to form a belief as to the truth thereof.

16. Defendant neither admits nor denies the conclusions of law contained in paragraph 16 of the complaint.

17. Defendant neither admits nor denies the allegations in paragraph 17 of the complaint for the reason that he is

without knowledge sufficient to form a belief as to the truth thereof, but he does know generally that the situation is approximately as alleged. Defendant further states that taxicabs and other types of motor vehicles have been and are engaged in transporting passengers and baggage between railroad terminals in the City of Chicago.

18. Defendant neither admits nor denies the conclusions contained in paragraph 18 of the complaint for the reason that he is without knowledge sufficient to form a belief as to the truth thereof.

19-20. Defendant neither admits nor denies the allegations contained in paragraphs 19 and 20 of the complaint because of the various conclusions, implications and ramifications contained therein upon which this defendant would have to speculate, and therefore states that he has not sufficient knowledge upon which to form a belief, but denies the repeated conclusions of a conspiracy.

21. Defendant neither admits nor denies the allegations contained in paragraph 21 of the complaint for the reason that he is without knowledge sufficient to form a belief as to the truth thereof.

22. Defendant denies the allegations contained in paragraph 22 of the complaint. He avers that he has been informed and verily believes and upon such information and belief charges that there were a substantial number of railroads as well as many individual travelers who were dissatisfied with the service being performed by plaintiff.

23-24. Defendant neither admits nor denies the allegations contained in paragraphs 23 and 24 of the complaint for the reason that he is without knowledge sufficient to form a belief as to the truth thereof, but he again specifically denies that the alleged conspiracy ever existed.

25. Defendant admits that he had never engaged in the rendition of station transfer or pick-up and delivery services in Chicago or elsewhere prior to October 1, 1955, and

further states that he has never engaged in the rendition of said services on or since that date. Defendant neither admits nor denies the other allegations contained in paragraph 25 of the complaint for the reason that he is without knowledge sufficient to form a belief as to the truth thereof.

26. Defendant admits the allegations contained in paragraph 26 of the complaint.

27. Defendant neither admits nor denies the conclusions of law contained in paragraph 27 of the complaint.

28-30. Paragraphs 28, 29 and 30 of the complaint are mere conclusions of the plaintiff and do not properly belong in the complaint, but defendant desires to answer these allegations even though they are not properly pleaded. Defendant states that he is and was at all times keenly aware of his duties, obligations and responsibilities as a member of the Interstate Commerce Commission and that he conducted himself in a proper manner at all times; and particularly that he was never offered anything of value or otherwise relating to the transaction involved herein, nor did he request or expect any such thing. He denies all insinuations and innuendoes set forth in paragraphs 28, 29 and 30.

31. Defendant denies the allegations, and each of them, contained in paragraph 31 of the complaint.

32. Defendant denies the allegations, and each of them, contained in paragraph 32 of the complaint. Without limiting the general denial, he denies specifically that there was ever any combination, conspiracy or concert of action between himself and any other person or persons, that he agreed to or ever did influence, induce or persuade or attempt to influence, induce or persuade any person or persons to enter into any combination, conspiracy or concert of action, that he received any promise of a valuable consideration from Keeshin or from any other person or persons, and that at any time he acted in violation of his duties as a member of the Interstate Commerce Commission.

33. Defendant denies that the alleged conspiracy ever existed and denies the allegations contained in subparagraphs (a) and (b) of paragraph 33 of the complaint. Defendant neither admits nor denies the allegations contained in subparagraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) of paragraph 33 of the complaint for the reason that he is without knowledge sufficient to form a belief as to the truth thereof. Defendant denies the scandalous and impertinent allegations contained in subparagraph (l) of paragraph 33 of the complaint. Defendant admits that on November 23, 1955, he resigned from the Interstate Commerce Commission, as alleged in subparagraph (m), but he denies that such resignation was the result of any
36 investigation by the United States Senate Committee on Government Operations, Permanent Subcommittee on Investigations, and denies that such resignation was for the purpose of concealing the terms of any alleged conspiracy.

34. Defendant denies that the alleged conspiracy ever existed and denies the allegations contained in subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) of paragraph 34 of the complaint.

35-36. Defendant denies the allegations contained in paragraphs 35 and 36 of the complaint and that plaintiff is entitled to any judgment, injunction or other relief.

Wherefore, defendant Hugh W. Cross prays that judgment be entered in his favor and against the plaintiff.

Charles F. Hough
Charles F. Hough
William F. Coale, Jr.
William F. Coale, Jr.
Louis A. Witry
Louis A. Witry
Attorneys for Defendant
Hugh W. Cross

231 S. La Salle St.
Chicago 4, Illinois
FRanklin 2-1270

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MOTION TO DISMISS.
(Filed April 25, 1956)

The New York Central Railroad Company, one of the defendants in the above cause, by its attorneys, moves the court to dismiss the complaint for failure to state a claim upon which relief can be granted and as grounds for said motion says:

1. The complaint does not contain sufficient allegations of fact to state a cause of action under Section 1 of the Sherman Act, 15 U.S. Code, Title 15, Section 1.
2. The complaint does not contain sufficient allegations of fact to state a cause of action under Section 2 of the Sherman Act, 15 U.S. Code, Title 15, Section 2.
3. The complaint fails to allege facts showing injury to the general public, which allegations are essential to establish a cause of action under the Sherman Act.
4. The complaint fails to allege sufficient facts against this defendant to state a cause of action for conspiracy under the Sherman Act.

Wayne M. Hoffman
Alvin B. Bush
Attorneys for Defendant
The New York Central Railroad Company
By Wayne M. Hoffman

Marvin A. Jersild
R. J. Murphy
R. O. Olson

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

Filed Stipulation and attached thereto: Copy of Motion to dismiss and in the alternative to strike certain parts of complaint, filed by certain defendants (Original filed April 25, 1956)

STIPULATION
(September 2, 1960)

The parties hereto, by their respective attorneys, stipulate and agree that the attached Motion to Dismiss and in the Alternative to Strike Certain Parts of Complaint filed by certain defendants is a true and complete copy of the original thereof filed in the above entitled cause on April 25, 1956.

Marvin A. Jersild RD
Marvin A. Jersild
Martin J. Keating RD
Martin J. Keating
Attorneys for Defendant
New York Central Railroad Company
Joseph C. Owens
Joseph C. Owens
Attorney for Defendant
Hugh W. Cross
Albert J. Meserow
Albert J. Meserow
Jerome F. Dixon
Jerome F. Dixon
Attorneys for Defendants
John L. Keeshin and Railroad Transfer Service, Inc.

Thomas C. McConnell
Thomas C. McConnell
Lee A. Freeman
Lee A. Freeman
Herbert B. Lazarus
Herbert B. Lazarus
Attorneys for Plaintiff,
Parmelee Transportation Company
Floyd E. Thompson by RP
Floyd E. Thompson
Philip W. Tone by REP
Philip W. Tone
Attorneys for certain railroads and railroad presidents, defendants

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MOTION TO DISMISS AND IN THE ALTERNATIVE TO STRIKE CERTAIN PARTS OF COMPLAINT

Now come defendants, Howard E. Simpson, Paul E. Feucht, Wayne A. Johnston, Fred G. Gurley, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Chicago and North Western Railway Company, Illinois Central Railroad and The Pennsylvania Railroad Company, by their attorneys, Floyd E. Thompson, Albert E. Jenner, Jr. and Philip W. Tone, and move to dismiss the complaint as to these defendants, and each of them, for failure to state a claim upon which relief can be granted, and for grounds of said motion show:

1. The complaint does not state facts which show a violation of Section 1 of the Sherman Act, 15 U.S. Code, Title 15, Section 1.

2. The complaint does not state facts which show a violation of Section 2 of the Sherman Act, U.S. Code, Title 15, Section 2.

40 3. The gist of the complaint is that the contract between "Chicago Terminal Lines and Railroad Transfer Service, Inc. was induced by improper influence brought to bear upon these defendants by a member of the Interstate Commerce Commission. The complaint does not state an offense under either Section 1 or Section 2 of the Sherman Act, but at most alleges a violation by a public official of his duties and obligations as such and knowledge of defendants of such alleged violation.

4. The complaint does not allege facts showing that these defendants conspired among themselves or with others to restrain trade or commerce in violation of Section 1 of the Sherman Act, or to monopolize any part of trade or commerce in violation of Section 2 of the Sherman Act, but on the contrary merely charges these defendants with

yielding to the influence and inducements of a member of the Interstate Commerce Commission in awarding the subject contract to Railroad Transfer Service, Inc.

5. The details of the alleged conspiracy, which appear in paragraph 32, not only fail to show a conspiracy in restraint of trade or a conspiracy to monopolize any part of trade proscribed by Sections 1 and 2 of the Sherman
41 Act, but the matters and things alleged show that no such conspiracy existed. The alleged "terms" of the combination or conspiracy considered singly or together so not state or tend to state a violation of Section 1 or of Section 2 of the Sherman Act.

6. "Chicago Terminal Lines" had the undoubted right to contract with Railroad Transfer Service, Inc. rather than Parmelee Transportation Company for the subject services. Plaintiff's complaint is not that the contract with Railroad Transfer Service, Inc., covering the business of "station transfer service" and "pick-up and delivery service," is exclusive in character, but rather than an exclusive contract to perform the subject services was not awarded to plaintiff.

7. No facts are alleged which show that there are restraints upon trade or monopolistic practices by these defendants, or any of them, injurious to the purchasers or users of the "station transfer service" and the "pick-up and delivery service" covered by the challenged contract, or resulting in other public injury. The facts alleged show that the challenged contract is a legal contract, and one in the public interest and not one proscribed by the Sherman Act.

And in the alternative these defendants move to strike from the complaint the following:

42 8. The matter stated in paragraph 16 is not statement of fact but is statement of mere legal conclusion.

9. Paragraph 19, and each sentence thereof, is specula-

tive, conclusional and argumentative in character, and does not allege facts pertinent to the cause of action sought to be stated.

10. The clauses of the fourth sentence of paragraph 20, "in an effort at all times to provide adequate service at the lowest cost, and thus to offer the railroads and the traveling public a better bargain than its competitors or potential competitors could offer," are mere puffing and are immaterial and impertinent.

11. Paragraph 21 is immaterial and impertinent in that it does not describe the alleged "various other services" referred to or state facts showing said services are in interstate commerce or affect interstate commerce; and, further, in that it is not alleged that said services have any relation to the matters complained of in the complaint.

12. Paragraph 22, and each and every part thereof, consists of mere self-serving and self-laudatory statements which are immaterial and impertinent. No facts are stated in the paragraph which show or tend to show or are related to a violation of the antitrust law.

13. The matter in the clause "and did find that plaintiff was willing and able to provide said services at a lower cost and on more favorable terms and conditions than any competitor or potential competitor of plaintiff" in paragraph 24 is immaterial and impertinent and is conclusional and argumentative.

14. The allegation of paragraph 25 is immaterial and impertinent.

15. All of the matter stated in Division V of the complaint, paragraphs 26 to 30, is immaterial and impertinent, and is scandalous in its implications. No facts are alleged in this division, or any part thereof, which show or tend to show or are related to a violation of the antitrust laws.

16. The matter stated in paragraph 31 is not statement of fact but is mere conclusion of the pleader.

17. The clauses "in exchange for Keeshin's promise of a valuable consideration and in violation of his aforesaid duties" and "by representing to them that he would benefit personally and derive value therefrom at a future date and that he would continue to exercise his powers as a member of the Commission until such future date" and "well knowing that it was improper and illegal for defendant Cross to attempt to persuade any of them to do so and in order to induce Cross to give favorable con-
44 sideration and to refrain from giving unfavorable consideration to matters of importance to defendant railroads which were then pending or which might by law be brought before the Commission" and "regardless of whether the cost and terms proposed by Keeshin for such services were less favorable than could be obtained by them as a result of free competition for such contract" appearing in paragraph 32 are, and each of them is, impertinent and scandalous and are designed to create prejudice against these defendants and contribute nothing to the pleading of the cause of action which plaintiff attempts to state.

18. The matters and things alleged in subparagraphs g, h, i, j, k, l and m of paragraph 33 are impertinent and immaterial. None of the facts alleged in these subparaparagraphs, paragraphs, or any of them, show or tend to show a violation of the antitrust laws, and the conclusions stated have no support in the alleged facts. The clause "regardless of whether plaintiff proposed to continue to do business with the Chicago Terminal Lines at a lower cost and on terms more favorable to them than could be obtained from Keeshin or any competitor or potential competitor of the plaintiff" and the clause "on terms and conditions more costly and less favorable to said railroads than could have been obtained from plaintiff" and the sentence "Said
45 agreement did not accord any of the Chicago Terminal Lines the free and unrestrained right to take inde-

pendent action with respect to any matter covered by the agreement." are, and each of them is, impertinent and scandalous and none of the alleged matter is material to the cause of action sought to be stated by plaintiff.

19. The matters and things alleged in subparagraphs d, e, f, g, i and j, and each of them, of paragraphs 34 are impertinent and immaterial. None of the facts stated in said subparagraphs show or tend to show a violation of the antitrust laws, and the conclusions stated have no support in the alleged facts.

20. The clause "and the business reputation associated with the name 'Parmelee'" in the third sentence of paragraph 35 is impertinent and immaterial.

21. The facts alleged show that the conspiracy to induce the termination of the arangement with plaintiff and the entering into a contract between the Chicago Terminal Lines and Railroad Transfer Service, Inc., charged in the complaint, is completed and no facts are alleged which justify relief in equity by injunction. Paragraph 36 states no ground for equitable relief, and this paragraph 46 and prayers C, D and E should be stricken.

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Attorneys for said defendants

Of Counsel
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11 South LaSalle Street
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Tel. Ra. 6-0220

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MEMORANDUM

(Filed September 19, 1956)

48 This is a civil anti-trust action to recover damages, and for an injunction, under Title 15 U.S.C., Sections 15 and 16, based on alleged violations of the Sherman Act, specifically Title 15 U.S.C. Sections 1 and 2. The plain-
49 tiff is a transportation company; defendants, so far as it is necessary to enumerate them for the purposes of the present discussion, are: railroad companies with terminals in Chicago; individuals who are presidents of railroads; a former member and chairman of the Interstate Commerce Commission; Chicago Terminal Lines, a voluntary association of railroads whose lines terminate in Chicago; and Railroad Transfer Service, a corporation. The case is now before the Court for a ruling on defendants' motion to dismiss the complaint for failure to state a cause of action.

Sections 1 and 2 of Title 15 forbid respectively "conspiracy in restraint of trade or commerce among the several states," and combining or conspiring to "monopolize any part of trade or commerce among the several states"; recovery of damages and the obtaining of an injunction by any person injured by a violation of these sections is authorized by sections 15 and 26 of the same Title.

The interstate commerce with which the complaint is concerned is the business of transporting from one to another of the eight railroad stations in Chicago passengers and baggage in the process of interstate journeys. That this service is "clearly a part of the stream of interstate commerce" and protected by the Sherman Act has been affirmed by the Supreme Court (*United States* v. *Yellow Cab Co.*, 332 U.S. 218, 228 (1947). The complaint alleges

that for over a century before March, 1955, although
50 there was competition for this market, plaintiff Parmelee Company and its predecessors had consistently offered better and cheaper service than any of its competitors, and had accordingly been hired to and did supply it, year after year, to the satisfaction of the defendant railroads and the traveling public. In the spring and summer of 1955 this fortuitous situation was terminated by the intervention of a conspiracy on the part of the defendants.

The nature and effect of this conspiracy, as described in the complaint, were briefly as follows: Hugh W. Cross became a member of the Interstate Commerce Commission in April 1946, and was its chairman from July 1, 1955, until his resignation on November 23, 1955. Before March, 1955, John L. Keeshin promised Cross a "valuable consideration" if Cross would persuade the individual railroad presidents to use their influence to cause Chicago Terminal Lines to eliminate plaintiff from the transfer business in Chicago and grant the contract instead to a corporation to be formed by Keeshin. This was to be accomplished by Cross' representing to the railroad presidents that he would exercise his influence on the Interstate Commerce Commission in their favor. During the months that followed, various acts were performed by the defendants to accomplish this objective, and the plan was brought to fruition in October, 1955. At that time, in accordance with the terms of the conspiracy, the transfer
51 contract was granted by Chicago Terminal Lines to Railroad Transfer Service, Inc., which was organized by Keeshin for the purpose of accepting it. This was done without any opportunity to plaintiff to compete for the contract, and despite the fact that the terms of the new agreement were less favorable to the railroads than those under which the plaintiff had formerly operated and those

which it was prepared to offer. This is a broad outline of the complaint. Certain of its detailed allegations will be considered in the course of an examination of the objections raised by the defendants.

The first of those objections takes the form of a syllogism, and runs as follows: The fact that the contract with Keeshin for terminal transfer services was an exclusive one did not make it illegal as a monopoly; that such contract was made by the railroads acting together did not indicate the existence of a monopoly, since they were not competitors but were in the position of a single buyer, and as such free to deal with whom they pleased; therefore, no violation of the anti-trust laws has occurred. As in all such arguments, the conclusion must fail if either the major or minor premise is in error. In this case, the major premise may be passed without much ado, since it has been held that the granting of an exclusive contract for the performance of this type of service is not the creation of a monopoly (*United States* v. *Yellow Cab Co., supra*, at 229).

The flaws in the proposition lie in the minor premise:
52 the assumption that the railroads could lawfully act together to grant a transfer contract ignores completely the complaint's allegation that the purpose and effect of that joint action was and is to prevent competition in bidding for contracts for terminal service. Acts otherwise lawful are "within the proscription of the anti-trust statutes, *if done for the purposes prohibited by the anti-trust laws; i.e., to eliminate competition.*" (*Noerr Motor Freight* v. *Eastern R.R. President's Assn.*, 113 F. Supp. 737, 742 (E.D. Pa. 1953; see also *Kobe, Inc.* v. *Dempsey Pump Co.*, 198 F. 2d 416, 459 (C.A. 10, 1952) and *Cape Cod Food Products* v. *National Cranberry Assn.*, 119 F. Supp. 900, 907 (D. Mass. 1954). That the alleged purpose here is prohibited by the anti-trust laws is perfectly plain. Competition may be as effectively eliminated by preventing it from coming into existence as by killing it after it is

flourishing; and these alternate methods of execution are equally repugnant to the anti-trust laws (*Noerr Freight, supra; American Federation of Tobacco Growers* v. *Neal*, 183 F. 2d 869, 873 (C.A. 4, 1950); *United States* v. *Griffith*, 334 U.S. 100 (1948); *American Tobacco Co.* v. *United States*, 338 U.S. 781, 809 (1946).

Certainly the defendant railroads may deal with whom they please, and are not compelled to enter into a contract with plaintiff if they do not wish to do so. What they
53 may not do, and what it is alleged that they have done, is to deliberately close, to the plaintiff and to everyone except Keeshin, competition in an important field of interstate commerce. As the Supreme Court remarked in *United States* v. *Yellow Cab Co., supra*,—

> "It is true, of course, that exclusive contracts for the transportation service in question are not illegal (citation). But a conspiracy to eliminate competition in obtaining those exclusive contracts is what is alleged in this case and it is a conspiracy of that type that runs afoul of the Sherman Act." (332 U.S., at page 229)

An examination of the complaint also reveals the weakness of the assumption that the several defendants were in the position of single buyers. It is alleged that the railroads planned and achieved the illegal exclusion from competition in concert with Keeshin (a prospective competitor of plaintiff), and Cross. The right to deal with whom one pleases does not include "agreeing or combining with another person in order to deprive a third person of a complete freedom of contract" (*United States* v. *Interstate Circuit, Inc.*, 20 F. Supp. 868, 872 (N.D. Tex., 1937). And quite aside from the parts allegedly played by Keeshin and Cross, it is clear that non-competitors subject themselves to the prohibitions of the Sherman Act when they conspire to restrain the trade of a third person (*United States* v. *General Motors*, 121 F. 2d 376 (C.A. 7,

1941); *United States* v. *New York Great A & P.*, 173
54 F. 2d 79, 88 (C.A. 7, 1949). The railroads, in short,
were not free to "create artificial conditions, which necessarily impede or burden" interstate commerce (*United States* v. *Patten*, 226 U.S. 525, 541 (1913), and this is the result of the conduct described in the complaint.

Defendants' next argument, to which they devote considerable space in their briefs, is stated by them as follows: "That the railroads were induced by alleged improper influence exerted upon them by a third party to choose Transfer rather than Parmelee did not convert the otherwise lawful conduct of the railroads into a Sherman Act violation." This conclusion is based on the assumption that their conduct was lawful except for the improper motives alleged; since it has just been held that it was not "otherwise lawful," but on the contrary illegal, the argument fails and must be disregarded. If the effect and purpose of a series of acts is to restrain or monopolize interstate commerce, the motive which inspires it, whether good or bad, is irrelevant (*Noerr Motor Freight, supra; Cape Cod Food Products, supra*).

It is urged that the complaint is fatally defective in that it fails to allege an injury to the public as opposed to a merely private wrong; and of course such an allegation is required (*Fedderson Motors, Inc.* v. *Ward*, 180 F. 2d 519
(C.A. 10, 1950). In the instant case, however, the re-
55 quirement has been met. The allegation of the elimination of competition for the contract to provide terminal transfer services is itself sufficient (*United States* v. *Yellow Cab Co., supra*). The importance of this service to the traveling public is too clear to require elucidation; and the allegation that its cost increased while service rendered declined manifestly sets forth a public rather than a merely private injury. (*National Used Car Market Reports* v. *Nat'l Automobile Dealers Ass'n*, 200 F. 2d 359 (App. D.C., 1952).

Defendants insist with considerable vigor that the complaint must fail because there is no allegation that the plaintiff "would have been awarded the contracts in question but for the wrongful conduct of defendants", and hence there is no adequate support for the claim for damages. Their argument is that, conspiracy or no, the railroads might have awarded the terminal contract to someone other than plaintiff, which they would have had a perfect right to do. This statement of the case, though true, is misleading. It is beyond the power of the plaintiff, or anyone else, to say now with certainty what might or might not have happened had the conspiracy not intervened. Facts have been alleged from which it would be possible and reasonable to draw the inference that the contract would have been awarded to plaintiff but for the wrongful conduct of the defendants. This is sufficient. (*Sun-*
56 *beam Corp.* v. *Payless Drug Stores*, 113 F. Supp. 31, 43 N.D. Cal., S.D., 1953); *Story Parchment Co.* v. *Peterson Co.*, 282 U.S. 555 (1931). The allegations concerning the long and harmonious previous relationship between the parties and of plaintiff's willingness to perform the service for a lower price in themselves go far toward establishing this thesis. For comparable situations, reference is made to *Kobe, Inc.* v. *Dempsey Pump Co.*, 198 F. 2d 416 (C.A. 10, 1952); *Story Parchment Co.* v. *Peterson Co., supra; Bigelow* v. *R.K.O. Pictures*, 326 U.S. 251 (1945).

The main brief was filed by the individual railroad presidents and five railroads; other defendants (quite properly and for the purpose of avoiding duplication) have adopted this brief as their own. The New York Central Railroad contends in addition that the complaint fails to state a cause of action as to it. This contention must be overruled; paragraphs 31, 32 and 33 of the complaint sufficiently allege the participation of all defendants, including the New York Central, in a past and present conspiracy

(*Louisiana Farmers' Protective Union, Inc.* v. *Great Atlantic & Pacific Tea Co.*, 131 F. 2d 419, C.A. 8, 1942); *United States* v. *Maryland State Licensed Beverage Ass'n Inc.*, 138 F. Supp. 685 (D. Md., 1956).

For the foregoing reasons, the various objections urged by the defendants are without merit. The complaint
57 on its face states a cause of action under the anti-trust laws. A successful conspiracy to restrain and monopolize interstate commerce by eliminating competition is clearly set forth; that the methods of accomplishing this objective are unusual is not important. The motion to dismiss will accordingly be overruled.

Philip L. Sullivan
Philip L. Sullivan, Judge.

Sept. 19th 1956.

58

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ORDER

Upon due consideration the Court being fully advised and having this day filed its Memorandum Opinion it is Ordered that the motion to dismiss as to each defendant be and the same hereby is denied and each defendant is granted 30 days from this date to answer complaint.

59

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ANSWER OF JOHN L. KEESHIN AND RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION

ANSWER

(October 19, 1956)

John L. Keeshin and Railroad Transfer Service, Inc., by Albert J. Meserow, Theodore J. Isaacs and Jerome F.

Dixon, their attorneys, for answer to the complaint say:

First Defense

The Complaint does not state a claim entitling plaintiff to the relief sought or any other relief.

Second Defense

1-2. Paragraphs 1 and 2 of the complaint consist of
60 legal conclusions to which no answer is necessary or appropriate.

3-6. They admit the allegations of paragraph 3 to 6 both inclusive.

7. They deny the allegations of paragraph 7.

8-9. They admit the allegations of paragraph 8 and 9.

10. They admit the allegations of the first sentence of paragraph 10 but deny the allegations of the second sentence of that paragraph.

11. They admit the allegations of paragraph 11.

12. They deny the allegations of paragraph 12.

13. They deny the allegations of paragraph 13.

14. They admit the allegations of paragraph 14, except that they deny the allegation that the connecting railroads involved in interstate trips through Chicago in most instances do operate into the same terminal station.

15. They admit that each day some persons make the arrangements described in paragraph 15, but deny that large numbers of persons make these arrangements each day.

16. Paragraph 16 is comprised of conclusions of law which defendants are not required to answer.

17. They admit the allegations of paragraph 17. They aver however, that the other persons referred to in the last sentence of that paragraph were plaintiff and its
61 predecessors in interest until October 1, 1955, and they further aver that plaintiff and its predecessors in interest performed the transfer services described under ar-

rangements with the railroads under which only plaintiff and its predecessors in interest conducted transfer services for routine passenger movements.

18. They deny the allegations of paragraph 18 as averred. They aver that the railroads have always been free to contract with any person for the giving of transfer services, except as that right was and is limited by lawful contract commitments but that prior to the 1954 negotiations for a new arrangement, there was no person who made an offer to perform the transfer service other than plaintiff and its predecessors in interest.

19. They deny the allegations of paragraph 19.

20. They deny the allegations of paragraph 20, except that they admit that plaintiff and its predecessors were engaged by the railroads to operate station transfer services in Chicago, did operate those services, and also pick-up and delivery services, and used vehicles and employed personnel in connection with those services; and they admit that plaintiff stated itself to be willing and able to continue to operate the station transfer service and also pick-up and delivery service, and that it offered to do so. However,

62 they aver that the offer of this defendant John L. Keeshin was more favorable to the traveling public and the railroads than the offer of plaintiff. Without limiting the denial, they deny that there was or is a conspiracy and that plaintiff was prevented from continuing the aforesaid services by any conspiracy.

21-22. They deny the allegations of paragraphs 21 and 22.

23. They deny the allegations of paragraph 23, except that they are informed and believe and upon such information and belief aver that on or about March 1951 the railroads which were employing plaintiff to perform the station transfer service appointed the six defendant railroads as a committee to review the cost to the railroads of providing the transfer service, to solicit motor vehicle

operators in addition to plaintiff to submit proposals to render station transfer and pick-up and delivery services, and to negotiate with the various motor vehicle operators for a contract to perform station transfer and pick-up and delivery services on behalf of the railroads; and that said committee agreed to report its findings and recommendations to the other railroads from time to time.

24. They deny the allegations of paragraph 24, except that they are informed and believe and upon such information and belief aver that the defendant railroads, acting on behalf of all the railroads terminating in Chicago who have use for transfer services, in 1951 and thereafter,
63 solicited various motor vehicle operators with respect to the rendition of station transfer and pick-up and delivery services and negotiated with some of these operators with respect to the proposed performance of these services, but no new arrangements resulted from these negotiations; that on January 29, 1954 another committee, consisting of the six defendant railroads, was formed for the purpose and given the assignment of reviewing the interstation transfer situation with a view to reducing the cost of and improving the service, of determining what motor vehicle operators would be capable and desirous of performing interstation transfer service for the railroads, of soliciting from these operators proposals for a contract for the performance of the services required, and of considering and making recommendations with respect to the proposals received; and that thereafter this committee made the study and from time to time reported its findings and in June 1955 made a recommendation to all of the railroads requiring said services.

25. They admit the allegations of paragraph 25.

26. They admit the allegations of paragraph 26.

27. Paragraph 27 consists of plaintiff's conclusions of law which defendants are not required to answer.

28. They admit the allegations of paragraph 28.

29. Paragraph 29 consists of argumentative matter which defendants are not required to answer.

30. They deny the allegations of paragraph 30.

64 31-32. They deny the allegations of paragraphs 31 and 32.

33. They deny the allegations of paragraph 33 and each subparagraph thereof except as hereinafter stated. They admit that the proposal of defendant Keeshin was accepted by all the railroads requiring said services at a meeting of representatives on June 13, 1955, and that plaintiff was so notified. Without limiting the denial made above in this paragraph, they deny that any representative of any railroad recommended the elimination of plaintiff from the business of rendering station transfer and pick-up and delivery services, except as the elimination of plaintiff was an incidental result of the acceptance of this defendant Keeshin's proposal to render the services. They admit the allegations of subparagraph (E), and the allegations of the first sentence of subparagraph (I), and they further admit that defendant Hugh Cross resigned as a member of the Interstate Commerce Commission. They aver that the offer of the defendant Keeshin was more advantageous to the travelling public and the railroads than the offer of plaintiff and was accepted by the railroads solely for that reason.

34-36. They deny the allegations of paragraphs 34, 35 and 36, both inclusive.

Wherefore, defendants ask that the complaint be dismissed and that their costs be assessed against plaintiff.

65 COUNTERCLAIM.

John L. Keeshin and Railroad Transfer Service, Inc., a Delaware corporation, counterclaimants, counterclaim against Parmelee Transportation Company and Morris Markin and allege as follows:

COUNT I.

1. This counterclaim is filed against counterdefendants under § 4 and 16 of the Clayton Act, 15 U. S. C. § 15 and 26, to recover damages sustained by counterclaimants by reason of counterdefendants' violations of § 1 and 2 of the Sherman Act, 15 U. S. C. § 1 and 2, and for injunctive relief against said unlawful conduct by counterdefendants.

2. Twenty-one railroads operate passenger services terminating in Chicago. Each railroad has its passenger terminal at one of the eight railroad stations in downtown Chicago. Each of these stations is used by from one to six railroads. A large number of railroad passengers whose continuous journeys begin and terminate outside Chicago travel through Chicago and transfer from one incoming railroad to another outgoing railroad. Approximately 3,900 per day of these passengers transfer between railroads located in different terminal stations. More than 99% of these passengers are traveling on through tickets, purchased by payment of a single joint fare for the entire trip, between origin and destination points located in different states.

3. Counterdefendant, Parmelee Transportation Company (and its predecessors in interest, hereinafter collectively referred to as Parmelee) was, prior to October 1, 1955, engaged in the business of transferring railroad passengers traveling through Chicago on through tickets and their baggage among Chicago's eight railroad stations (interstation transfer service) and in carrying baggage between these stations and other places in the Chicago area (pick-up and delivery service). Over 99% of these passengers were so transferred in the course of interstate rail journeys, and most of the baggage was so transported as a part of a continuous interstate movement.

4. Parmelee performed its interstation transfer service for and pursuant to agreements with the railroads termi-

nating in Chicago. Interstate rail passengers traveling through Chicago received, as part of their through tickets, transfer coupons entitling them to interstation transfer service without additional charge, except in the limited number of cases in which a one-way fare from Chicago to destination would be less than a specified minimum sum. Thus, with the minor exception noted, the entire cost of the station transfer service was paid for and absorbed by the railroads.

5. Until October 1, 1955, and for many years prior thereto, Parmelee enjoyed a monopoly of the business
67 of performing an interstation transfer service in Chicago. Parmelee exploited its monopoly during this period by raising from time to time the price of the transfer service to the railroads, while refusing to permit the railroads to examine its books to determine whether these price increases were justified.

6. In 1954 the railroads, for the purpose of obtaining the best possible transfer service at the lowest cost, appointed a committee consisting of six railroads and delegated to this committee the authority and responsibility of making a study of the transfer situation, determining what motor vehicle operators other than Parmelee would be capable and desirous of performing interstation transfer service for the railroads, soliciting from these operators proposals for contracts for the performance of the service, and considering and making recommendations with respect to the proposals received.

7. In performance of the duties delegated to it, the committee ascertained what motor vehicle operators in addition to Parmelee were capable of performing and might wish to perform the transfer service. It solicited from these operators and Parmelee proposals for an interstation transfer contract with the railroads. These proposals were carefully considered by the committee.

8. Counterclaimant John L. Keeshin, one of the motor vehicle operators solicited by the committee, submitted to the committee a proposal which provided for the ren-
68 dition for a period of five years of interstation transfer service of a quality superior to and at a cost lower than the service which Parmelee had been and was then providing and was offering to continue to perform. The committee, after carefully considering and weighing the proposal of counterclaimant Keeshin and the proposal submitted by Parmelee, unanimously concluded that the Keeshin proposal was more advantageous to the railroads and the traveling public and unanimously voted to recommend to the railroads the acceptance of that proposal.

9. On or about June 13, 1955 the railroads decided to accept counterclaimant Keeshin's proposal and on that date notified counterclaimant Keeshin that they would enter into a contract with him embodying the terms of that proposal. On the same date the railroads advised Parmelee that after the close of business on September 30, 1955 they would no longer require the services of Parmelee in the transfer of passengers and baggage among railroad stations in Chicago.

10. Thereafter, the railroads and counterclaimant Railroad Transfer Service, Inc. (hereinafter called "Railroad Transfer"), a corporation organized by counterclaimant Keeshin, executed a contract providing for the performance by Railroad Transfer of the interstation transfer service and certain pick-up and delivery service for a period of five years.

11. Subsequent to June 13, 1955, Parmelee and counterdefendant Morris Markin, Parmelee's President and Chairman of the Board of Directors, unlawfully combined and
69 conspired with others to counterclaimants unknown to eliminate counterclaimants Keeshin and Railroad Transfer as competitors for the interstation transfer service contract, to render said Keeshin and Railroad Transfer un-

able to perform the interstation transfer service, and thereby unlawfully to restrain and monopolize the aforesaid interstate trade and commerce in violations of § 1 and 2 of the Sherman Act. The means the conspirators agreed to employ to achieve this end were as follows: Parmelee, Markin and other conspirators would induce the City Council of the City of Chicago to amend its ordinance for the regulation of public passenger vehicles, Chapter 28 of the Municipal Code of Chicago, to make it impossible for anyone except Parmelee to obtain a license from the City to operate terminal vehicles for the conduct of interstation transfer service. They would induce the officials of the City of Chicago administering the ordinance to refuse to issue a license to counterclaimants Keeshin or Railroad Transfer for the operation of terminal vehicles in connection with an interstation transfer business. They would induce the enforcement officers of the City of Chicago to refuse to permit counterclaimants Keeshin or Railroad Transfer to operate terminal vehicles in connection with the interstation transfer service.

12. On and prior to June 13, 1955, Chapter 28 of the Municipal Code of Chicago contained the following provisions:

Section 28-1: " 'Public passenger vehicle' means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois.

" 'Terminal vehicle' means a public passenger vehicle which is operated under contracts with railroad and steamship companies, exclusively for the transfer of passengers from terminal stations."

Section 28-6: "Upon receipt of an application for a public passenger vehicle license the commissioner

shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year. (Passed Coun. J. 12-20-51, p. 1596; amend. 4-16-52, p. 2178)."

Section 28.31: "No person shall be qualified for a terminal vehicle license unless he has a contract with one or more railroad or steamship companies for the transportation of their passengers from terminal stations.

"It is unlawful to operate a terminal vehicle for the transportation of passengers for hire except for their transfer from terminal stations to destinations in the area bounded on the north by E. and W. Ohio Street; on the west by N. and S. Desplaines Street; on the south by E. and W. Roosevelt Road; and on the east by Lake Michigan. (Passed Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905)."

71 13. On and prior to June 13, 1955, Parmelee was the only motor vehicle operator having a transfer contract with the railroads and licensed under the ordinance.

14. After June 13, 1955 Parmelee, Markin and their co-conspirators, pursuant to the aforesaid unlawful com-

bination and conspiracy, for the purpose of eliminating counter-claimants Keeshin and Railroad Transfer as competitors of Parmelee for the interstation transfer business and restraining the aforesaid trade and commerce in said business, in violation of § 1 and 2 of the Sherman Act, induced the City Council of the City of Chicago, on or about July 26, 1955, to pass the following ordinance:

"*Be It Ordained by the City Council of the City of Chicago*:

"Section 1. Section 28-1 of the Municipal Code of Chicago is amended by striking the definition of 'Terminal vehicle' contained therein and substituting therefor the following:

" 'Terminal vehicle' means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in Section 28-31.

"Section 2. Section 28-31 of said code is amended to read as follows:

"28-31 Terminal Vehicles) Terminal vehicles shall not be used for transportation of passengers for hire except from railroad terminal stations and steamship docks to destinations in the area bounded on the north by E. and W. Ohio Street; on the west by N. and S. Desplaines Street; on the south by E. and W. Roosevelt Road; and on the east by Lake Michigan.

72 "Section 3. Chapter 28 of said code is amended by adding two new sections after Section 28-31 as follows:

"28-31.1 Public Convenience and Necessity) No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner

as specified for hearings in Section 28-22.1, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued.

"In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

"1. The public demand for such service;

"2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;

"3. The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;

"4. Any other facts which the commissioner may deem relevant.

"If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner.

"28-31.2 Local Fares) The rate of fare for local transportation of every passenger in terminal vehicles of the licensee shall be uniform, regardless of the distance traveled; provided that children under 12 years of age, when accompanied by an adult, shall be carried
73 at not more than half fare. Such rates of fare shall be posted in a conspicuous place or places within each vehicle as determined by the commissioner.

"Section 4. This ordinance shall be effective upon its passage and due publication."

15. The purpose of Parmelee in inducing the enactment, and the City Council in enacting, the aforesaid amendment, and the effect of the amendment, was to preclude the issuance of a motor vehicle license by the City of Chicago for the operation of terminal vehicles in connection with an interstation transfer business to counterclaimants Keeshin, Railroad Transfer or any other competitor or potential competitor of Parmelee and to insure the perpetuation of Parmelee's monopoly of the aforesaid interstate commerce.

16. The City of Chicago and its officials asserted and assert that the ordinance is valid and enforceable against counterclaimant Railroad Transfer and that the City will enforce it against counterclaimant Railroad Transfer.

17. Counterclaimant Railroad Transfer was compelled, as the alternative to permitting Parmelee to exclude the competition of Railroad Transfer and unlawfully to monopolize the aforesaid interstate commerce, to attempt to establish in a judicial proceeding that the aforesaid ordinance did not apply to the operations of Railroad Transfer under its contract with the railroads, or that if the ordinance did apply to that operation it was void under the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3. It asserted these contentions
74 in a declaratory judgment action in the United States

District Court for the Northern District of Illinois, Eastern Division, entitled, Atchison, Topeka and Santa Fe Railway Company, et al. *vs.* City of Chicago, et al., No. 55 C 1883.

18. In pursuance of the aforesaid unlawful course of conduct, and in an effort to insure that its unlawful attempt to monopolize the aforesaid commerce and to eliminate the competition of counterclaimant Railroad Transfer

would succeed, Parmelee intervened in the aforesaid action, contending that said counterclaimant's operations "have substantially and unfairly affected" Parmelee's business and arguing to the Court that the ordinance was valid, that it applied to said counterclaimant and that it rendered unlawful the conduct by said counterclaimant of the interstation transfer business.

19. On motion of the defendant City of Chicago in that action, the District Court entered summary judgment in favor of the defendants and against the plaintiffs, with costs and dismissed the action.

20. The plaintiffs in that action have appealed to the United States Court of Appeals for the Seventh Circuit, where the case is now pending as cause No. 11692. The District Court enjoined enforcement of the ordinance during the pendency of the appeal, upon the filing of a bond in the amount of $50,000.

75 21. In an effort to prevent the injury to itself which would result from the enforcement of the ordinance pursuant to counterdefendants' unlawful purpose, counterclaimant Railroad Transfer has expended, in the aforesaid action, the sum of $50,000 in attorney fees, costs and other expenses.

22. If counterdefendants succeed in their aforesaid unlawful object by causing the ordinance to be enforced against Railroad Transfer, counterclaimants will be deprived of the right to contract with the railroads who will be denied the benefits of competition for the transfer service. Parmelee, as the possessor of an unlawful monopoly, will be free to dictate to the railroads, as it has in the past, the terms upon which transfer service will be rendered, to the detriment of counterclaimants, the railroads and the public. Counterclaimants' damage resulting from the elimination of competition for the transfer service pursuant to the aforesaid unlawful conduct will exceed $5,000,000.

23. The aforesaid unlawful attempted monopolization is continuing and unless equitable relief is granted, will continue to cause irreparable injury to counterclaimants and to the public. There is no adequate remedy at law.

COUNT II

1-12. Counterclaimants reallege paragraphs 1-10, 12 and 13 of Count I of this counterclaim as paragraphs 1-12, 76 respectively of this count.

13. Parmelee, under the direction of counterdefendant Morris Markin, its president, attempted to eliminate counterclaimant Railroad Transfer as a competitor and thereby attempted to monopolize the aforesaid interstate commerce, consisting of the interstation transfer business, in violation of Section 2 of the Sherman Act, by inducing the City Council of the City of Chicago, on or about July 26, 1955, to pass the ordinance set forth in paragraph 14 of Count I of this counterclaim.

14-22. Counterclaimants reallege paragraphs 15-23 of Count I of this counterclaim as paragraph 14-22, respectively, of this paragraph.

WHEREFORE, counterclaimants ask:

(a) That damages be assessed in their favor against counterdefendants in treble damages in the amount of $5,700,000.

(b) That counterdefendants be perpetually enjoined from continuing the aforesaid combination and conspiracy and attempt to monopolize;

(c) That the aforesaid combination and conspiracy and attempt to monopolize be declared unlawful;

(d) That counterclaimants be allowed a reasonable attorney's fee and costs; and

77 (e) That counterclaimants be granted such further relief as the Court may find appropriate.

Albert J. Meserow
Albert J. Meserow

Jerome F. Dixon
Jerome F. Dixon
Theodore J. Isaacs
Theodore J. Isaacs
Attorneys for defendants aforesaid and for counterclaimants.

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In The United States District Court

* * (Caption—No. 56 C 323) * *

ANSWER OF DEFENDANT RAILROAD PRESIDENTS AND CERTAIN OF DEFENDANT RAILROADS.

(Filed Oct. 19, 1956)

79 Howard E. Simpson, Paul E. Feucht, Wayne A. Johnston and Fred G. Gurley, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Chicago and North Western Railway Company, Illinois Central Railroad Company and The Pennsylvania Railroad Company, defendants, by Floyd E. Thompson, Albert E. Jenner, Jr. and Philip W. Tone, their attorneys, for answer to the complaint herein say:

80 First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

1-2. Paragraphs 1 and 2 of the complaint consist of legal conclusions to which no answer is necessary or appropriate.

3-6. They admit the allegations of paragraph 3 through 6.

7. They deny that Paul E. Feucht resides in Barrington, Illinois, or is the president or a director of the Chicago and North Western Railway Company, but they admit he was the president and a director of that railroad at the time the complaint was filed.

8-9. They admit the allegations of paragraphs 8 and 9.

10. They admit the allegations of the first sentence of paragraph 10. They deny the allegations of the second sentence of that paragraph.

11. They admit the allegations of paragraph 11.

12. They deny the allegations, and each of them, of paragraph 12.

13. They deny that the conspiracy alleged in the complaint existed or exists, and therefore they deny the allegations, and each of them, of paragraph 13.

14. They admit the allegations of paragraph 14, except that they deny the allegation that the connecting railroads involved in interstate trips through Chicago "in most instances" do not operate into the same terminal station.

81 15. They admit that each day some persons make the arrangements described in paragraph 15, but deny that large numbers of persons make these arrangements each day.

16. Paragraph 16 consists of legal conclusions to which no answer is necessary or appropriate.

17. They admit the allegations of paragraph 17. They aver that the "other persons" referred to in the last sentence of that paragraph were plaintiff and its predecessors in interest until October 1, 1955, and that plaintiff and its predecessors in interest performed the transfer services described under arrangements with the railroads pursuant to which only plaintiff and its predecessors in interest conducted transfer services for routine passenger movements.

18. They deny the allegations of paragraph 18 as they are stated. They aver that the railroads were and are free to contract with any person for the rendition of transfer services, except as that right was and is limited by lawful contract commitments, but that prior to the 1954 negotiations for a new arrangement, there was no person who made an offer to perform the transfer service other than plaintiff and its predecessors in interest.

19. Paragraph 19 consists entirely of speculation, conclusion and argument not requiring an answer, but they, nevertheless, deny the allegations as they are stated.

20. They deny the allegations, and each of them, of paragraph 20, except that they admit that plaintiff and its predecessors were engaged by the railroads to operate station transfer services in Chicago, did operate those services and also pick-up and delivery services, and used vehicles and employed personnel in connection with
82 those services; and they admit that plaintiff stated itself to be willing and able to continue to operate the station transfer service and also pick-up and delivery service, and that it offered to do so. However, they aver that the offer of John L. Keeshin was more favorable to the traveling public and the railroads than the offer of plaintiff. Without limiting the denial, they deny specifically that there was or is a conspiracy and that plaintiff was prevented from continuing the aforesaid services by any conspiracy.

21-22. They deny the allegations, and each of them, of paragraphs 21 and 22.

23. They deny the allegations, and each of them, of paragraph 23, except that they admit that on or about February 9, 1951 the railroads which were employing plaintiff to perform the station transfer service appointed the six defendant railroads as a committee to review the cost to the railroads of providing the transfer service, to solicit motor vehicle operators in addition to plaintiff to submit

proposals to render station transfer and pick-up and delivery services, and to negotiate with the various motor vehicle operators for a contract to perform station transfer and pick-up and delivery services on behalf of the railroads.

24. They deny the allegations, and each of them, of paragraph 24, except that they admit that the defendant railroads, acting on behalf of all the railroads terminating in Chicago who have use for transfer services, in 1951 and thereafter, solicited various motor vehicle operators with respect to the rendition of station transfer and pick-up and delivery services and negotiated with some of these operators with respect to the proposed performance of these services, but no new arrangements resulted from
83 these negotiations. They aver that on January 29, 1954 another committee, consisting of the six defendant railroads, was formed for the purpose and given the assignment of reviewing the interstation transfer situation with a view to reducing the cost of and improving the service, of determining what motor vehicle operators would be capable and desirous of performing interstation transfer service for the railroads, of soliciting from these operators proposals for a contract for the performance of the services required, and of considering and making recommendations with respect to the proposals received. Thereafter this committee made the study and from time to time reported its findings and in June 1955 made a recommendation to all of the railroads requiring said services.

25. They admit the allegations of paragraph 25.

26. They admit the allegations of paragraph 26.

27. Paragraph 27 consists of legal conclusions and argument to which no answer is necessary or appropriate.

28. They admit the allegations of paragraph 28.

29. Paragraph 29 consists of argument, insinuations and innuendo to which an answer is neither necessary nor appropriate.

30. Paragraph 30 consists of scandalous and impertinent assumptions and conclusions which require no answer, but they, nevertheless, deny all of the insinuation and innuendo presumptuously woven into generalizations and pious mouthings on ethical business conduct, and they deny that they or any of them breached any duty.

31-32. They deny the allegations, and each of them, of paragraphs 31 and 32.

84 33. They deny the allegations, and each of them, of paragraph 33, except as hereinafter stated:

(c) They aver, as to subparagraph (c) of paragraph 33, that for several months prior to and through June 3, 1955, the six defendant railroads, acting through their passenger agents, considered and weighed the proposals received by them solely on their merits and on or about June 3, 1955, unanimously voted to and did recommend to the railroads the acceptance of the proposal of Keeshin solely because they in good faith believed this proposal was more advantageous to the traveling public and to the railroads.

(d) They admit that the Keeshin proposal was accepted by all the railroads requiring said services at a meeting of representatives on June 13, 1955, and that plaintiff was so notified. Without limiting the denial made above in this paragraph, they specifically deny that any representative of any railroad recommended the elimination of plaintiff from the business of rendering station transfer and pick-up and delivery services, except as the elimination of plaintiff was an incidental result of the acceptance of Keeshin's proposal to render the services.

(e) They admit the allegation of subparagraph (e).

(f) They admit that on or about September 15, 1955, Earl B. Padrick, acting as agent of all railroads requiring transfer and delivery service pursuant to

separate written instructions received from each railroad, executed a written contract dated as of October 1, 1955, with Railroad Transfer Service, Inc. Without limiting the denial made at the beginning of this paragraph, they deny specifically the characterization
85 of this contract in subparagraph (f) and they aver that the contract speaks for itself and refer to the contract for the meaning and effect thereof, and they aver that said contract provided terms and conditions more favorable to the traveling public and the railroads than plaintiff had offered.

(h) They admit that on or about September 29, 1955, Railroad Transfer Service, Inc. qualified to do business in Illinois. They state that the allegations of subparagraph (h), concerning the supposed requirement of a public passenger vehicle license and the supposed violation of the purported Chicago Public Passenger Vehicle Ordinance, are irrelevant and immaterial.

(i) They admit the allegations of the first sentence of subparagraph (i). They aver that the services performed by Transfer pursuant to the contract have been and are less costly to the railroads and are more extensive and valuable to the traveling public and to the railroads than the services previously performed by plaintiff and which plaintiff had offered to continue to perform.

(j)-(l) Without limiting the general denial at the beginning of this paragraph 33, they specifically deny the impertinent and scandalous allegations of subparagraphs (j), (k) and (l).

(m) They admit that on November 23, 1955, defendant Cross resigned his position with the Interstate Commerce Commission, and without limiting the denial, they specifically deny that such resignation was for the purpose of concealing the non-existing alleged conspiracy.

86 34-36. They deny the allegations, and each of them, of paragraphs 34, 35 and 36.

Wherefore, defendants ask that the complaint be dismissed and that their costs be assessed against the plaintiff.

FLOYD E. THOMPSON
ALBERT E. JENNER, JR.
PHILIP W. TONE
By /s/ Philip W. Tone
Attorneys for said Defendants.

Of Counsel:
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Illinois Central Railroad Company
FLOYD J. STUPPI,

Attorney for Fred G. Gurley and The Atchison,
Topeka and Sante Fe Railway Company.
ROBERT H. BIERMA,
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Attorneys for The Pennsylvania Railroad Company.

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IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

ANSWER OF DEFENDANT THE NEW YORK CENTRAL RAILROAD COMPANY

(Filed Oct. 19, 1956)

The New York Central Railroad Company, by its attorneys, for answer to the complaint herein says:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

1. Paragraphs 1 and 2 of the complaint consist of legal conclusions to which no answer is necessary or appropriate.

2. It denies that Paul E. Feucht resides in Barrington, Illinois, or is the president or a director of the Chicago and North Western Railway Company as alleged in paragraph 7.

3. The allegations of the second sentence of paragraph 10 are denied.

4. It denies the allegations, and each of them, of paragraph 12.

88 5. It denies that the conspiracy alleged in the complaint existed or exists, and therefore it denies the allegations, and each of them, of paragraph 13.

6. It admits the allegations of paragraph 14, except that it denies the allegation that the connecting railroads involved in interstate trips through Chicago "in most instances" do not operate into the same terminal station.

7. It admits that each day some persons make the arrangements described in paragraph 15, but denies that large numbers of persons make these arrangements each day.

8. Paragraph 16 consists of legal conclusions to which no answer is necessary or appropriate.

9. It admits the allegations of paragraph 17. It avers that the "other persons" referred to in the last sentence of that paragraph were plaintiff and its predecessors in interest until October 1, 1955, and that plaintiff and its predecessors in interest performed the transfer services described under arrangements with the railroads pursuant to which only plaintiff and its predecessors in interest conducted transfer services for routine passenger movements.

10. It denies the allegations of paragraph 18 as they are stated. It avers that the railroads were and are free to contract with any person for the rendition of transfer services, except as that right was and is limited by lawful contract commitments, but that prior to the 1954 negotiations for a new arrangement, there was no person who
89 made an offer to perform the transfer service other than plaintiff and its predecessors in interest.

11. Paragraph 19 consists entirely of speculation, conclusion and argument not requiring an answer, but it nevertheless, denies the allegations as they are stated.

12. It denies the allegations, and each of them, of paragraph 20, except that it admits that plaintiff and its predecessors were engaged by the railroads to operate station transfer services in Chicago, did operate those services, and also pick-up and delivery services, and used vehicles and employed personnel in connection with those services; and it admits that plaintiff stated itself to be willing and able to continue to operate the station transfer service and also pick-up and delivery service, and that it offered to do so. However, it avers that the offer of John L. Keeshin was more favorable to the traveling public and the railroads than the offer of plaintiff. Without limiting the denial, it denies specifically that there was or is a conspiracy and that plaintiff was prevented from continuing the aforesaid services by any conspiracy.

13. It denies the allegations, and each of them, of paragraphs 21 and 22.

14. It denies the allegations, and each of them, of paragraph 23, except that it admits that on or about March 1951 the railroads which were employing plaintiff to perform the station transfer service appointed the six defendant railroads as a committee to review the cost to the railroads of providing the transfer service, to solicit motor vehicle operators in addition to plaintiff to submit proposals to render station transfer and pick-up and delivery services on behalf of the railroads; and that said committee agreed to report its findings and recommendations to the other railroads from time to time.

15. It denies the allegations, and each of them, of paragraph 24, except that it admits that the defendant railroads, acting on behalf of all the railroads terminating in Chicago who have use for transfer services, in 1951 and thereafter, solicited various motor vehicle operators with respect to the rendition of station transfer and pick-up and delivery services and negotiated with some of these operators with respect to the proposed performance of these services, but no new arrangements resulted from these negotiations. It avers that on January 29, 1954 another committee, consisting of the six defendant railroads, was formed for the purpose and given the assignment of reviewing the interstation transfer situation with a view to reducing the cost of and improving the service, of determining what motor vehicle operators would be capable and desirous of performing interstation transfer service for the railroads, of soliciting from these operators proposals for a contract for the performance of the services required, and of considering and making recommendations with respect to the proposals received. Thereafter this committee made the study and from time to time reported its findings and in June 1955 made a recommendation to all of the railroads requiring said services.

16. Paragraph 27 consists of legal conclusions and argument to which no answer is necessary or appropriate.

17. Paragraph 29 consists of argument, insinuations and innuendo to which an answer is neither necessary nor appropriate.

18. Paragraph 30 consists of impertinent assumptions and conclusions which require no answer, but it, nevertheless, denies all of the allegations of paragraph 30.

19. It denies the allegations, and each of them, of paragraphs 31 and 32.

20. It denies the allegations, and each of them, of paragraph 33, except as to the following sub-paragraphs:

(c) It avers, as to subparagraph (c) of paragraph 33, that for several months prior to and through June 3, 1955, the six defendant railroads, acting through their passenger agents, considered and weighed the proposals received by them solely on their merits and on or about June 3, 1955, unanimously voted to and did recommend to the railroads the acceptance of the proposal of Keeshin solely because they in good faith believed this proposal was more advantageous to the traveling public and to the railroads.

(d) It admits that the Keeshin proposal was accepted by all the railroads requiring said services at a meeting of representatives on June 13, 1955, and that plaintiff was so notified. Without limiting the denial
92 made above in this paragraph, it specifically denies that any representative of any railroad recommended the elimination of plaintiff from the business of rendering station transfer and pick-up and delivery services, except as the elimination of plaintiff was an incidental result of the acceptance of Keeshin's proposal to render the services.

(e) It admits the allegations of subparagraph (e).

(f) It admits that on or about September 15, 1955, Earl B. Patrick, acting as agent of all railroads requiring transfer and delivery service pursuant to separate written instructions received from each railroad,

executed a written contract dated as of October 1, 1955, with Railroad Transfer Service, Inc. Without limiting the denial made at the beginning of this paragraph, it denies specifically the characterization of this contract in subparagraph (f) and it avers that the contract speaks for itself and refers to the contract for the meaning and effect thereof, and it avers that said contract provided terms and conditions more favorable to the traveling public and the railroads than plaintiff had offered.

(h) It admits that on or about September 29, 1955, Railroad Transfer Service, Inc. qualified to do business in Illinois. It states that the allegations of
93 subparagraph (h), concerning the supposed requirement of a public passenger vehicle license and the supposed violation of the purported Chicago Public Passenger Vehicle Ordinance, are irrelevant and immaterial, and it avers that the assertion by plaintiff of the alleged ordinance in itself constitutes a violation of Section 2 of the Sherman Act.

(i) It admits the allegations of the first sentence of subparagraph (i). It avers that the services performed by Transfer pursuant to the contract have been and are less costly to the railroads and are more extensive and valuable to the traveling public and to the railroads than the services previously performed by plaintiff and which plaintiff had offered to continue to perform.

(m) It admits that on November 23, 1955, defendant Cross resigned his position with the Interstate Commerce Commission, and without limiting the denial, it specifically denies that such resignation was for the purpose of concealing the non-existing alleged conspiracy.

21. It denies the allegations, and each of them, of paragraphs 34, 35 and 36.

WHEREFORE, this defendant asks that the complaint be dismissed and that its costs be assessed against the plaintiff.

/s/ Marvin A. Jersild
/s/ R. J. Murphy
/s/ R. O. Olson
/s/ Wayne M. Hoffman
Attorneys for said defendant,
The New York Central Railroad Company

94 May 31, 1957: Filed Interrogatories propounded to Plaintiff by certain defendants.

103 July 1, 1957: Filed Interrogatories propounded to:

103 Defendant The Baltimore and Ohio Railroad Company.

107 Defendant The Atchison, Topeka and Santa Fe Railway Co.

111 Defendant Illinois Central Railroad.

115 Defendant The New York Central Railroad Company.

119 Defendant Chicago and North Western Railway Company.

123 Defendant The Pennsylvania Railroad Company.

127 Filed Objections of Plaintiff to interrogatories, propounded by certain defendants on May 31, 1957.

130 Filed Memorandum in support of plaintiff's objections.

135 July 9, 1957: Filed Memorandum in opposition to plaintiff's objections to interrogatories.

145 July 16, 1957: Filed Plaintiff's reply memorandum in support of objections to interrogatories propounded by certain defendants.

August 7, 1957: Filed objections of certain defendants to interrogatories propounded by plaintiff on July 1, 1957, *viz*:

156 By—Illinois Central Railroad Company.
160 The Pennsylvania Railroad Company.
164 The Baltimore and Ohio Railroad Company.
168 The Atchison, Topeka and Santa Fe Railway Company.
172 New York Central Railroad Company.
176 Chicago and North Western Railway Company.
180 Filed Brief in support of Railroad Defendants' objections to interrogatories.
211 August 26, 1957: Filed Answer to interrogatories propounded to plaintiff on May 31, 1957, by certain defendants.
289 September 6, 1957: Filed Motion of Defendant Railroads and Railroad Presidents compel answer to certain interrogatories.
293 Filed Brief in support of motion of defendant Railroads et al., to compel answer to certain interrogatories.
300 Filed Plaintiff's brief in opposition to the Railroad defendants' objections to plaintiff's interrogatories.
414 September 24, 1957: Filed Answer of plaintiff to motion of certain defendants to compel answers to interrogatories.
429 Filed Supplemental answer to interrogatories 7 (B) propounded to plaintiff on May 31, 1957 by certain defendants.
432 October 4, 1957: Filed Reply of Railroad defendants to plaintiff's brief in opposition to interrogatories.
464 October 10, 1957: Filed Reply Brief in support of motion of defendant Railroads and Railroad Presidents to compel answer to certain interrogatories.
476 October 14, 1957: Order entered denying motion of defendant railroads to set down for hearing their objections to the interrogatories.
477 November 13, 1957: Filed Memorandum of the Court.

484 November 15, 1957: Filed Memorandum in support of motion of defendant Railroads and Railroad Presidents to reconsider ruling sustaining plaintiff's objections to interrogatories propounded by certain defendants on May 31, 1957.

VOLUME II

490 January 6, 1958: Filed Notice and attached thereto:

492 Second set of interrogatories propounded to plaintiff by Defendant Railroads and Railroad Presidents.

501 January 16, 1958: Filed Objections of plaintiff to interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958.

504 January 20, 1958: Filed Motion of Parmelee Transportation Company to extend time to answer interrogatories.

507 January 22, 1958: Filed Plaintiff's brief in support of objections to interrogatories propounded by Defendant Railroads and Railroad Presidents on January 7, 1958.

515 February 6, 1958: Filed Answer to second set of interrogatories propounded to plaintiff on January 7, 1958 by certain defendants.

519 Filed Second supplemental answer to interrogatories propounded to plaintiff on May 31, 1957 by certain defendants.

524 February 7, 1958: Filed Brief in opposition to plaintiff's objections to second set of interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958.

540 February 18, 1958: Filed plaintiff's reply brief in support of objections to interrogatories propounded by defendant Railroads on January 7, 1958.

556 March 4, 1958: Filed defendants' supplementary brief on objections to second set of interrogatories.

560 June 10, 1958: Order entered sustaining objections

of plaintiff to second set of interrogatories propounded to plaintiff on January 7, 1958, in part and overruled in part.

564 June 30, 1958: Filed plaintiff's answer to second set of Interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958.

578 July 31, 1958: Filed Notice and Motion.

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ORDER

This cause having come on to be heard on the motion of Plaintiff to set an early trial date, and the Court having heard counsel,

It Is Ordered That:

1. The motion of plaintiff to set a trial date is denied.

2. This cause is set for pre-trial conference November 17, 1958 at 10:00 A.M.

3. On or before September 25, 1958 plaintiff shall serve upon defendants and file with the Court a list of the documents it intends to offer in evidence at the trial;

4. On or before October 10, 1958 defendants shall serve upon plaintiff and file with the Court a list or lists of the documents they respectively intend to offer at the trial.

5. On or before October 20, 1958 plaintiff shall serve upon defendants and file with the Court an additional
582 list of the documents, if any, it intends to offer as rebuttal to documents appearing on defendants' list or lists.

6. On or before November 3, 1958 all parties shall serve upon all other parties and file with the Court their objections to the admission in evidence of documents appearing on lists submitted by opposing parties; and if any question as to the authenticity of a document is to be raised, a statement to that effect.

7. All parties are directed to be prepared to present and argue at the pre-trial conference all questions of evidence and scope of proof which they believe will or may arise during the trial of the case and any other matters which they believe will expedite the trial of this case.

Enter:

Judge

August 1, 1958.

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

PLAINTIFF'S LIST OF DOCUMENTS

(Filed September 25, 1958)

Plaintiff submits to and serves upon the defendants herein the following list of documents which plaintiff presently intends to offer in evidence at the trial of this cause.[1] Further preparation for trial, the procurement of admissions from defendants before trial or during the course of the trial may make it unnecessary to offer in evidence many of the herein listed documents. Plaintiff expressly reserves the right to offer in evidence at the trial of this cause, additional documents which are not now available to plaintiff but which may hereafter become available through discovery and pretrial procedures or independent investigation, and reserves the right to present at the trial of this cause schedules, graphs, charts and summaries prepared from information contained
584 in such documents or based upon further investigation:

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[1] In some instances the documents listed below are photostats or other copies, but pursuant to the discovery procedures followed heretofore, no effort is made herein to differentiate between originals and copies.

√ = Specifically mentioned in Motion.
× = *Objected to, but not specifically mentioned in* Motion.

√ 1. Documents identified at the deposition of W. C. Miller, Jr., taken in Washington, D. C. on February 5, 1957, and marked for identification as Miller Exhibits 1 through 9, inclusive, including the reverse sides of the exhibits and related exhibits which were identified by letters added to the numbers of the exhibit.

× 2. Telegram from Wayne A. Johnston to Hugh W. Cross dated May 26, 1955.

× 3. Documents identified at the deposition of N. Page Worthington taken in Baltimore, Maryland, on February 7, 1957, and marked for identification as C & P Exhibits 1 through 91, inclusive, including the reverse sides of the exhibits and related exhibits which were identified by letters added to the number of the exhibit.

× 4. Documents identified at the deposition of Howard E. Simpson taken in Baltimore, Maryland, on February 11, 1957, and marked for identification as Simpson Exhibits 1 through 8, inclusive. Included in this designation is Simpson Exhibit 5 which consists of the complete 1955 diary maintained by or for Mr. Simpson and Simpson Exhibit 6 which consists of the complete 1955 diary maintained by Mr. Schnell, Secretary to Mr. Simpson.

× 5. Documents identified at the deposition of J. F. Whittington taken in Baltimore, Maryland, on February 11, 1957, and marked for identification as Whittington Exhibits 7 and 8. Included in this designation is Whittington Exhibit 7 which consists of the complete 1955 diary maintained by or for Mr. Whittington.

6. Registration card for Mr. and Mrs. J. F. Whittington at The Madison Hotel in Atlantic City, New Jersey, No. 205916 indicating arrival April 8, 1955.

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7. Ledger sheet of The Madison Hotel in Atlantic City, New Jersey, No. 205916 covering charges to Mr. and Mrs. J. F. Whittington for their stay at the hotel from April 8 to 11, 1955.
8. Letter from Floyd E. Thompson to Lee A. Freeman dated March 21, 1957.
9. Letter from Floyd E. Thompson to Lee A. Freeman dated April 8, 1957.
10. Documents identified at the deposition of Fred Carpi taken in Philadelphia, Pennsylvania, on February 12, 1957, and marked for identification as Capri Exhibits 2 through 4 and 5A through 5M, inclusive.
11. Letter dated March 20, 1957, from E. H. Barlow, Secretary, Eastern Railroad Presidents Conference to Lee A. Freeman, together with attachments showing the composition of the Executive Committee of the Eastern Railroad Presidents Conference during April 1 to December 1, 1955, and the members present at meetings of the E. R. P. C. during that period.
12. Documents identified at the deposition of Morris Forgash taken in New York City, New York, on March 15, 1957, and marked for identification as Forgash Exhibits 1 through 36, inclusive. In addition, copies of the following statements rendered by the New York Telephone Company covering charges for toll calls and telegrams to telephone number Oregon 5-5600 in New York City listed in the name of United

States Freight Company which statements were made available at the Forgash deposition but not specifically identified:

Summary sheet for May 17 in the statement for the month of May 1955, containing the initial entry "May 17 OLD GWICH .35"

Summary sheet for July 21 and 22 in the statement for the month of July 1955, containing the initial entry "July 21 SYRACUSE 4.20"

Summary sheet for August 5 and 6 in the statement for month of August 1955 containing the initial entry 'Aug 5 RUTHERFD .15"

586 Summary sheet for November 10 to 23 in the statement for the month of November 1955, containing the initial entry "Nov 10 FROM LITTLE ROCK 15.00".

× 13. Documents identified at the deposition of Elmer Van Buskirk taken in New York City, New York, on April 23, 1957, and marked for identification as Taft Hotel Exhibits 1A through 6, inclusive, including the reverse sides of the exhibits and related exhibits which were identified by letters added to the number of the exhibit.

× 14. Documents identified at the deposition of Allen Ennis taken in Washington, D. C. on May 15, 1957, and marked for identification as Ennis Exhibits 1 through 10B, inclusive, including the reverse sides of the exhibits and related exhibits which were identified by letters added to the number of the exhibit.

× 15. Documents identified at the deposition of Joseph Youdell taken in Washington, D. C. on May 15,

1957, and marked for identification as Youdell Exhibits 1 through 17A, inclusive, including the reverse sides of the exhibits and related exhibits which were identified by letters added to the number of the exhibits and including Exhibits 5B-1, 5B-2, 8B-1, 8B-2, 12B-1, 12B-2, 12B-3, 15B-1 and 15B-2.

16. Documents identified at the deposition of Joseph Neil Ryan taken in Washington, D. C. on May 15, 1957, and marked for identification as Ryan Exhibits 1 through 4, 5-1, 5-2, 6 through 9, 10A and 10B.

17. Travel vouchers submitted to Interstate Commerce Commission by Commissioner Hugh W. Cross covering a trip to New York City, New York, from March 17 to March 18, 1955, and a trip to Miami, Florida, from March 26 to March 30, 1955.

18. The appointment book for the year 1955 maintained by or for Mr. A. E. Perlman, President of the New York Central Railroad Co.

19. Printed transcript of hearings before the Permanent Subcommittee on Investigations of the Committee on Government Operations, United States Senate, 84th Congress, 2nd Session for November 15, 1955, involving "Hugh W. Cross—Chairman of the Interstate Commerce Commission" printed by the United States Government Printing Office.

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20. Pages 1 through 5 and 28 through 34, inclusive, of Senate Report No. 1444 to 84th Congress, 2nd Session being "Annual Report of the Committee on Government Operations made by its Permanent Subcommittee on Investigations"

dated January 25, 1956, and printed by the United States Government Printing Office.

21. Documents identified at the deposition of E. H. Taylor-Hay taken in Chicago, Illinois, on October 29, 1956, and marked for identification as Parmelee Exhibits 1 through 8, inclusive.

22. Documents and photigraph identified at the deposition of Hugh W. Cross taken in Chicago, Illinois, on November 28 and 29, 1956, and marked for identification as Cross Exhibits 1 through 6, inclusive.

23. Documents identified at the deposition of W. G. Baird, Jr., taken in Chicago, Illinois, on December 6, 1956, and marked for identification as Baird and Warner Exhibits 1 through 9, inclusive.

24. Documents identified at the deposition of A. A. Wilbur taken in Chicago, Illinois, on December 6, 1956, and marked for identification as Wilbur Exhibits 1 through 5, inclusive, together with the reverse sides of exhibits identified by letters added to the numbers of the exhibit.

25. Letter from Albert A. Wilbur to Hugh W. Cross dated July 19, 1955.

26. Documents identified at the deposition of Clarence W. Diver taken in Waukegan, Illinois, on December 14, 1956, and marked for identification as Diver Exhibits 1 through 21, inclusive.

27. Copy of Quit Claim Deed from Marguerite K. Erickson to Hugh W. Cross and Helen M. Cross, dated October 11, 1955, conveying certain described real estate in Lake County, Illinois.

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28. Deed dated October 11, 1955, from American National Bank and Trust Company of Chicago,

as Trustee under Trust No. 8643 to Hugh W. Cross and Helen M. Cross, conveying certain described real estate in Lake County, Illinois.

29. Trust Deed from Hugh W. Cross to Helen M. Cross as grantors to LaSalle National Bank, as Trustee, of certain described real estate in Lake County, Illinois, dated November 9, 1955.

30. Deed dated July 18, 1956, from LaSalle National Bank as Trustee to Martin E. Klein and Florence B. Klein conveying certain described real estate in Lake County, Illinois.

31. Documents identified at the deposition of John M. Barney take nin Chicago, Illinois, January 9, 1957, and marked for identification as Harris Exhibits 1 through 6, inclusive.

32. Documents identified at the deposition of John Kapel taken in Chicago, Illinois, on January 9, 1957, and marked for identification as LaSalle Exhibits 1 through 6, inclusive, including the reverse side and related exhibits identified by letters added to the number of the exhibit.

33. Documents identified at the deposition of William G. Higginbotham taken in Chicago, Illinois, on January 9, 1957, and marked for identification as LaSalle Exhibits 7 through 11B, inclusive, including the reverse side and related exhibits identified by letters added to the number of the exhibit.

34. Documents identified at the deposition of George Slosson, Jr., taken in Chicago, Illinois, on January 11, 1957, and marked for identification as CAA Exhibits 1 through 7, inclusive.

(*Note*: CAA Exhibits 3 and 4 were by inadvertence marked 16 and 17 which were the pages of the magazine being identified)

× 35. Undated penciled memorandum identified as Whittington Exhibit 2 at the deposition of J. F. Whittington taken in Chicago, Illinois, on January 25, 1957.

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× 36. Documents identified at the deposition of E. M. Holt taken in Chicago, Illinois, on January 29, 1957, and marked for identification as Holt Exhibits 1 through 7, inclusive.

× 37. The 1955 dairy and 1955 appointment sheets maintained by or for Wayne A. Johnston and identified as Johnston Exhibits 3 and 4 at deposition hearings of Mr. Johnston held in Chicago, Illinois, on February 25, 1957.

× 38. Documents identified at the deposition of Benjamin E. Campbell taken in Chicago, Illinois, on March 1, 1957, and marked for identification as Illinois Bell Exhibits 1 through 3, 3-1 through 3-73, 4-A through 41W, inclusive, including the reverse sides of exhibits identified by letters added to the number of the exhibit.

× 39. Documents identified at the deposition of William F. Caspers taken in Chicago, Illinois, on March 26 and 29, 1957, and marked for identification as Ambassador Exhibits 1 through 8, inclusive, including the reverse sides of exhibits and related exhibits which were identified by letters added to the number of the exhibit.

× 40. Letter dated August 10, 1955, from D. A. Fawcett, Resident Vice President, New York Central Railroad Company and D. B. Jenks, Vice President, Chicago Rock Island and Pacific Railroad Company to Parmelee Transportation Company and others.

× 41. Documents identified at the deposition of T. E. LeSeuer taken in Chicago, Illinois, on April 26, 1957, and marked for identification as LeSeuer Exhibits 1 through 7, inclusive.

× 42. Affidavits executed by Fred G. Gurley on November 8, 1955, and November 10, 1955, and marked for identification as Gurley Exhibits 1 and 2 at the deposition of Mr. Gurley taken in Chicago, Illinois, on May 29, 1958.

× 43. Documents identified at the deposition of P. H. Sullivan taken in Minneapolis, Minnesota, on August 9, 1957, and marked for identification as Sullivan Exhibits 1 through 4, inclusive.

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× 44. Documents identified at the deposition of John L. Keeshin taken in Chicago, Illinois, on September 11, 12 and 25, 1957, and marked for identification as Keeshin Exhibits 1 through 53, inclusive, 55, 56, 59 and 62, including the reverse sides of exhibits and related exhibits which were identified by letters added to the number of the exhibit.

× 45. Applications for certificates of title filed on behalf of Railroad Transfer Service, Inc. with the Secretary of State of the State of Illinois, executed on August 1, 1955, covering the following Ford Motor Co. country sedans, 1955 models:

Factory No.	*Title No. Issued*
U5PX-175729	R1216651
U5PX-175730	R1216652
U5PX-176229	R1216653
U5PX-176235	R1216654
U5PX-176236	R1216655
U5PX-176237	R1216656
U5PX-176238	R1216657

U5PX-176239	R1216658
U5PX-176240	R1216659
U5PX-176241	R1216660
U5PX-176242	R1216661
U5PX-176243	R1216662
U5PX-176244	R1216663
U5PX-176245	R1216664
U5PX-176246	R1216665
U5PX-176247	R1216666
U5PX-176630	R1216667
U5PX-176631	R1216668
U5PX-176632	R1216669
U5PX-176633	R1216670
U5PX-176634	R1216671
U5PX-177112	R1216672
U5PX-177113	R1216673
U5PX-177114	R1216674
U5PX-177115	R1216675
U5PX-177116	R1216676
U5PX-177117	R1216677
U5PX-177118	R1216678
U5PX-177119	R1216679
U5PX-177120	R1216680
U5PX-177121	R1216681
U5PX-177122	R1216682
U5PX-177123	R1216683
U5PX-177124	R1216684
U5PX-177125	R1216685
U5PX-177557	R1216686
U5PX-177558	R1216687
U5PX-177559	R1216688
U5PX-177560	R1216689
U5PX-177561	R1216690
U5PX-177562	R1216691

U5PX-177563	R1216692
U5PX-177564	R1216693
U5PX-177565	R1216694
U5PX-177566	R1216695
U5PX-177567	R1216696
U5PX-177568	R1216697
U5PX-178056	R1216698
U5PX-179481	R1216699
U5PX-181239	R1216700

46. Applications for certificates of title filed on behalf of Railroad Transfer Service, Inc. with the Secretary of State of the State of Illinois executed on September 22, 1955, covering the following Fruehauf Vans—1955 Models:

Factory No.	*Title No. Issued*
AV-300131	R1450691
AV-300112	R1450692
AV-300113	R1450693
AV-300118	R1450694
AV-300128	R1450695
AV-300120	R1450696
AV-300115	R1450697
AV-300121	R1450698
AV-300129	R1450699
AV-300130	R1450700
AV-300125	R1450701
AV-300119	R1450702
AV-300124	R1450703
AV-300134	R1450704
AV-300123	R1450705
AV-300116	R1469049
AV-300132	R1469051
AV-300114	R1469053
AV-300135	R1469055

AV-300127	R1484142
AV-300111	R1484144
AV-300133	R1484146
AV-300117	R1484148
AV-300126	R1484150
AV-300122	R1484152

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× 47. Applications for certificates of title filed on behalf of Railroad Transfer Service, Inc. with the Secretary of State of the State of Illinois, executed on September 26, 1955, covering the following Edwards Vans, 1955 Models:

Factory No.	*Title No. Issued*
51226	R1467979
51227	R1467980
51228	R1467981
51229	R1467982
51230	R1467983
51231	R1467984
	R1467985
51233	R1467986
51234	R1467987
51220	R1467988

× 48. Letter of Benjamin F. Goldstein to the Honorable Richard J. Daley, Mayor of the City of Chicago dated September 24, 1955.

× 49. Annual reports to stockholders for the years 1954 and 1955 issued by the following railroads:

Atchison, Topeka and Santa Fe Railway Co.
Baltimore and Ohio Railroad Co.
Chicago and North Western Railway Co.
Illinois Central Railroad
New York Central Railroad Co.
Pennsylvania Railroad Co.

50. Documents submitted by Hugh E. Cross and taken from the files of Carrolton Farm Supply Co. or Hugh E. Cross and coded for identification as Cross Exhibits 1 through 6 and 10 through 19, inclusive.

51. Copy of proposal dated January 31, 1955, submitted by B. J. McCarthy, National Fleet Sales, of International Harvester Co. to Lasham Cartage Co., 2601 Archer Avenue, Chicago, Illinois, for Model CO-195 International Truck.

52. Copy of proposal dated March 10, 1955, submitted by National Fleet Sales of International Harvester Co. to Lasham Cartage Co., 345 Hudson Street, New York, New York, for Model CO-205 International Truck.

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53. Copy of proposal dated March 10, 1955, submitted by National Fleet Sales of International Harvester Co. to Lasham Cartage Co., 345 Hudson Street, New York, New York, for Model A. C. 160 International Truck.

54. Copy of purchase order No. 949 from Lasham Cartage Co., 2601 Archer Avenue, Chicago 8, Illinois, under date of 4/12/55 to Carrolton Farm Supply, Carrolton, Illinois, marked Att: Mr. Hugh Cross, Jr., covering 25 International tractors Model RC-162 and 5 International tractors Model CO-205, apparently signed on behalf of Lasham Cartage Co. by E. J. Arndt.

55. Copy of dealer's order for motor truck and attachment to Springfield, Illinois, District Office of International Harvester Company executed on behalf of Carrolton Farm Supply Co. by Hugh E. Cross bearing date 4/13/55, covering 5 Model CO-205 Tractors.

V 56. Copy of dealer's order for motor truck and attachment to Springfield, Illinois, District Office of International Harvester Company executed on behalf of Carrolton Farm Supply Co. by Hugh E. Cross bearing date 4/13/55 covering 25 Model RC-162 Tractors.

× 57. Documents produced from the files of the Atchison, Topeka and Santa Fe Railway Co. in response to subpoenas duces tecum and coded for identification as SF-1 through SF-10 and SF-29 through SF-124, inclusive.

× 58. Documents produced from the files of the Baltimore and Ohio Railroad Company in response to subpoenas duces tecum and coded for identification as B & O-1 through B & O-215 and B & O-282 through B & O-294, inclusive.

× 59. Documents produced from the files of the Chicago and North Western Railway Co. in response to subpoenas duces tecum and coded for identification as NW-F-1 through NW-F-26, NW-F-48 through NW-F-53, NW-57 through NW-64, NW-68 through NW-97, NW-117-118, NW-126 through NW-369 and NW-F-161, inclusive.

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× 60. Documents produced from the files of the Pennsylvania Railroad Company in response to subpoenas duces tecum and coded for identification as P-1 through P-48, P-38a through P-43a and P-58 through P-66, inclusive.

× 61. Documents produced from the files of the Illinois Central Railroad in response to subpoenas duces tecum and coded for identification as IC-J-1 through IC-J-3, IC-13 through IC-208, inclusive, including exhibits marked with an additional identifying letter "a".

62. Documents produced from the files of the New York Central Railroad Co. in response to subpoenas duces tecum and coded for identification as "NYC" or "NY" 1 through 352, inclusive, with the exception of NY-88, NY-89, NY-206 through NY-220, NY-336, NY-338 and NY-339.

63. Documents produced from the files of the Western Passenger Association in response to subpoenas duces tecum and coded for identification as A-1 through A-12, A-71 through A-78, A-121 through A-124, A-127, A-152, A-153, A-159 through A-300, A-312 through A-603, A-625 through A-697, A-703 through A-724, inclusive.

64. Documents produced from the files of R. E. Dean and the LaSalle Street Station in response to subpoenas duces tecum and coded for identification as LaS.-1 through LaS.-12, inclusive.

65. Documents produced from the files of the Chicago Union Station in response to subpoenas duces tecum and coded for identification as CUS-1 through CUS-12, inclusive.

66. Clipping from the Wall Street Journal of July 12, 1955, marked for identification as Padrick Exhibit 13 at the deposition of Earl B. Padrick taken in Chicago, Illinois, on April 12, 1957.

67. Copies of the following communications, "Docket and Digest" and "Proceedings of Meeting" of the Trunk Line—Central Passenger Committee and Western Passenger Association—Chicago Terminal Lines:

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Dated	
January 29, 1949	Proceedings of meeting of January 29, 1949
May 14, 1949	Proceedings of meeting of May 13, 1949.

February 12, 1951 Proceedings of meeting of February 9, 1951.

Communication dated June 22, 1951, from Messrs. Arnold and Padrick to representatives of Chicago Terminal Lines, including Committee Report of June 18, 1951 attached:

February 4, 1954 Proceedings of meeting of January 29, 1954

August 17, 1954 Proceedings of meeting of August 11, 1954.

Communication dated January 11, 1955 from Messrs. Winkler and Padrick to representatives of Chicago Terminal Lines, including Committee Report of January 5, 1955 attached:

Docket and Digest for meeting of Chicago Terminal Lines February 1, 1955.

February 4, 1955 Proceedings of meeting of February 1, 1955.

Docket and Digest for meeting Chicago Terminal Lines June 13, 1955.

June 20, 1955 Proceedings of meeting of June 13, 1955.

September 13, 1955 Proceedings of meeting of September 9, 1955.

September 19, 1955 Proceedings of meeting of September 14, 1955.

September 20, 1955 Proceedings of meeting of September 15, 1955.

Docket and Digest for meeting Chicago Terminal Lines May 2, 1956.

May 22, 1956 Proceedings of meeting of May 2, 1956.

Docket and Digest for meeting Chicago Terminal Lines November 12, 1956.

596 November 14, 1956 Proceedings of meeting of November 12, 1956.

× 68. Copy of agreement between New York, Chicago and St. Louis Railroad Company and Parmelee Transportation Company dated March 1, 1941 and agreements supplemental thereto.

× 69. Letter dated June 3, 1953, from S. W. Bone, Passenger Traffic Manager, New York Central System to M. Markin including attachment.

× 70. Letter dated October 17, 1946 from H. W. Siddall, Chairman Western Passenger Association to C. E. Johnston, Chairman Western Association of Railway Executives.

× 71. Letter from E. B. Padrick to M. Markin dated March 8, 1955.

× 72. Copy of memorandum from E.M.H. (Holt) to E.R.C. (Comer) dated September 28, 1953, including attachment of letter from M. Markin to E. M. Holt dated September 24, 1953.

× 73. Letter from J. R. Brennan, Passenger Traffic Manager, Chicago and North Western Railway Co. to Morris Markin dated April 21, 1953.

× 74. Letter from T. E. LeSeuer, General Passenger Agent, Nickel Plate Road, to Morris Markin dated May 21, 1953.

× 75. Letter from Fred Baird, Assistant Vice President, Passenger Traffic, New York Central System, to M. Markin dated May 11, 1953.

× 76. Letter from E. R. Comer, Passenger Traffic Manager, The Pennsylvania Railroad to M. Markin and C. L. Passolt dated May 12, 1953.

× 77. Letter from A. D. Martin, General Passenger Traffic Manager, Chicago Rock Island and Pacific Railroad Co. to Morris Markin dated May 5, 1953.

× 78. Letter from A. K. Noe, General Baggage Agent, Atchison, Topeka and Santa Fe Railway Co. to W. A. Scheeder dated May 6, 1953.

× 79. Letter from George Kimbel, Passenger Traffic Manager, Illinois Central Railroad, to C. L. Passolt dated May 11, 1953.

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× 80. Letter from R. E. Coleman, Passenger Traffic Manager, Baltimore and Ohio Railroad Co. to W. A. Scheeder dated September 8, 1954.

× 81. Letter from Fred Baird, Assistant Vice President, Passenger Traffic, New York Central System to Morris Markin dated March 24, 1955, coded Parm. 246.

× 82. Letter from I. C. Bruce, General Passenger Traffic Manager, CRI & P Ry. Co. to Morris Markin dated May 17, 1954, coded Parm. 248.

√ 83. Code of Ethics for Practitioners before the Interstate Commerce Commission adopted by the Commission effective April 1, 1955.

√ 84. 69th Annual Report of the Interstate Commerce Commission dated November 1, 1955. Printed by the United States Government Printing Office (1956).

√ 85. Organization minutes of the Interstate Commerce Commission relating to the Organization of Divisions and Boards and Assignment of Work. Copy revised to March 1, 1955, and copy revised to July 1, 1955.

√ 86. Decision of the Interstate Commerce Commission on Investigation and Suspension Docket No. 6148—Reduced Rates on Coal from the East to the Northwest—March 12, 1954.

V 87. Decision of Division 4 of the Interstate Commerce Commission in Finance Docket 18834—February 10, 1955.

V 88. Decision of Division 4 of the Interstate Commerce Commission in Finance Docket 18897—April 27, 1955.

V 89. Decision of Division 4 of the Interstate Commerce Commission in Finance Docket 19042—September 29, 1955.

V 90. Finance Docket 18866—Decision by Division 4 of the Interstate Commerce Commission—May 26, 1955; Decision by the Interstate Commerce Commission on June 22, 1955.

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V 91. Finance Docket 18656—Deci. on by Division 4 of the Interstate Commerce Commission—March 2, 1955; Decision by the Interstate Commerce Commission on May 24, 1955.

V 92. Decision of Interstate Commerce Commission in consolidated cases 30416—Class Rates, Mountain—Pacific Territory and 30660—Class Rates, Transcontinental Rail 1950. Submitted July 11, 1955, Decided October 19, 1955.

V 93. Certified copy of pages 4509 to 4518, 4570 to 4581, 4553-4558, 4646 to 4650, 4746 and 4747 of the stenographic transcript of oral argument held in the case noted in paragraph 92 on July 11 and 12, 1955.

V 94. Decision of Interstate Commerce Commission in Case No. 31358—Chicago Burlington and Quincy Railroad Company, et al. v. New York Susquehana and Western Railroad Company, et al. Decided October 17, 1955.

Submitted on behalf of Parmelee Transportation Co., plaintiff, by its attorneys:

Lee A. Freeman
Lee A. Freeman
Thomas C. McConnell
Thomas C. McConnell
John Paul Stevens
John Paul Stevens

September 25, 1958.

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

LIST OF DOCUMENTS OF HUGH W. CROSS, DEFENDANT

(Filed October 10, 1958)

This defendant, Hugh W. Cross, submits to and serves upon plaintiff herein his position with reference to his intention to offer documents in evidence at the trial of this cause. The list which might be offered by this defendant will of course, depend upon the documents which may be allowed in evidence at the trial of the above cause, and this defendant reserves the right to offer in evidence at the trial of this cause documents which may be necessitated by any ruling of the court with regard to the evidence of the plaintiff.

The foregoing reservation is particularly directed at the list of documents submitted by plaintiff corporation of records of the Interstate Commerce Commission, plaintiff's list Nos. 83 through 94 inclusive. This defend-

600 ant will object to each and all of said proposed exhibits, but if allowed to be introduced in evidence, this defendant will attempt to produce and will offer in evidence, if produced, all records of proceedings of said Interstate

Commerce Commission pertaining to the railroads, transfer and trucking businesses before that body during the term of office of this defendant.

Hough & Cessna
Charles F. Hough
Charles F. Hough
William F. Coale
William F. Coale
Louis A. Witry
Louis A. Witry

John F. Gibbons
Of Counsel

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

LIST OF DOCUMENTS OF DEFENDANT RAILROADS AND RAILROAD PRESIDENTS

(Filed October 20, 1958)

Subject to the range of plaintiff's evidence and the extent to which inquiry into collateral issues is permitted, the defendants represented by the undersigned will make appropriate use on the trial of the documents hereinafter described or identified by code numbers adopted by plaintiff and these defendants (including duplicates otherwise coded):

Letter dated August 15, 1946 from M. Markin to H. W. Siddall.
Letter dated September 19, 1946 from L. W. Landman to H. W. Siddall.
Letter Dated October 17, 1946 from Chairman, Western Passenger Association to C. E. Johnston.
Letter dated July 29, 1947 from L. W. Landman to H. W. Siddall.

Letter dated July 30, 1947 from Chairman, Western Passenger Association to L. W. Landman.

Call for Meeting of Chicago Terminal Lines, August 7, 1947, dated July 30, 1947.

A-21 and A-22.

Estimated Profit and Loss Statement for One Year Period from July 1, 1947 to July 1, 1948, dated 8/7/47.

602 Letter dated August 8, 1947 from Chairman, Western Passenger Association, to L. W. Landman.

Parm. 244.

Letter dated December 30, 1947 from L. W. Landman to H. W. Siddall.

Call for Meeting of Chicago Terminal Lines, December 30, 1947, dated December 20, 1947.

A-20.

A-557 and A-558.

A-545 and A-546.

Proceedings of Meeting, Chicago Terminal Lines, January 16, 1948.

Letter dated January 24, 1948 from H. W. Siddall to Parmelee Transportation Company.

Letter dated February 12, 1948 from L. W. Landman to H. W. Siddall.

Letter dated February 16, 1948 from Chairman, Western Passenger Association to L. W. Landman.

A-531.

SF 17.

SF 18.

A 528.

A 529.

A-527.

SF 98.

Letter dated March 15, 1951 from W. A. Scheeder to G. R. Kimbel.

Letter dated March 12, 1951 from G. R. Kimbel to Wm. Scheeder.

NY 289.

Letter dated April 26, 1951 from Harry J. Dooley to Sid Bone.

N. W. 216.

Letter dated June 4, 1952 from C. L. Passolt to E. B. Padrick.

Parm. 234.
Parm. 235.
603 Parm. 238
Parm. 239
Parm. 240
Parm. 241
Parm. 242
Parm. 243
Parm. 231
Parm. 236.
Parm. 237.
Parm. 232
Parm. 233
Parm. 229
Parm. 230
A 396
A 397

Letter dated January 20, 1954 from Morris Markin to E. W. Padrick.

Parm. 126
Parm. 127
Parm. 128
Parm. 129
Parm. 130
A 6 (2nd)
A 7 (2nd)
A-11—also coded A 8 (2nd)
A 9 (2nd)
A 10 (2nd)
A-11 (2nd)
Parm. 206
Parm. 207
I. C. 67
I. C. 66
A 701

Letter dated March 16, 1954 from J. R. Brennan to S. W. Bone, G. R. Kimbel, S. F. G. Nelson, J. L. Sloan and E. M. Holt.

Call for Meeting of Chicago Terminal Lines, April 15, 1954, and also Meeting of Chicago Terminal Lines with Representatives of Parmelee Transportation Company, April 16, 1954, dated April 7, 1954, with attached Index of Schedules.

Proceedings of Meeting, Chicago Terminal Lines, April 16, 1954.

Proceedings of Meeting, Chicago Terminal Lines, April 26, 1954.

Parmelee Company Estimated Loss of Revenue for the Year 1954 based on the Revenue for the First Quarters for the Years 1952, 1953 and 1954, with Schedule Showing the Estimated Savings for the Year ending April 30, 1955, dated 4/26/54.

Parm. 141

Parm. 142

Parm. 140

Parm. 72 Parm. 79, both inclusive.

Letter dated May 18, 1954 from V. T. Corbett and E. B. Padrick to Members of Western Passenger Association.

Letter dated June 22, 1954 from Howard L. Willett, Jr. to H. H. Pevler.

604 Letter dated July 8, 1954 from H. H. Pevler to Howard L. Willett, Jr.

A 669 to A 672, both inclusive.

Letter dated July 23, 1954 from R. E. Coleman to R. E. Carroll.

Letter dated July 27, 1954 from H. H. Pevler to Howard L. Willett, Jr.

Letter dated August 2, 1954 to Larry N. Delp from files coded "A".

Letter dated August 2, 1954 from J. R. Brennan to Lee Landon.

Letter dated August 25, 1954 from R. E. Coleman to R. E. Carroll.

Letter dated August 26, 1954 from P. D. Carroll Trucking Co. to R. E. Coleman.

Keeshin Ex. 1 for identification.

NY 274

A 697

Letter dated August 27, 1954 from Passenger Traffic Manager to J. A. Jakes from NYC files.
SF 87
Letter dated September 1, 1954 from Gilbert T. Ayers to G. R. Kimbel.
NY 273
A 688
Letter dated September 8, 1954 from E. B. Padrick to Harry M. Delp.
NY 272
A 664
Letter dated September 10, 1954 from Passenger Traffic Manager to R. T. Anderson from NYC files.
Keeshin Ex. 11.
Letter dated September 13, 1954 from Howard L Willett, Jr. to E. M. Holt.
605 I. C. 62
I. C. 56 to I. C. 58, both inclusive
I. C. 48
Memorandum dated 9/15/54 initialed D. J. H. to J. R. K.
NY 269
CUS-10
A 556
A 652 to 654, both inclusive.
Letter dated October 1, 1954 from J. R. Brennan to Lee S. Landon.
A 661 and A 661a
I. C. 54
CUS-7 and CUS-8
A-181 and A-182
A-180
A 659
A 655 to A 658, both inclusive
A 165 to A 171, both inclusive
A 650

Letter dated December 22, 1954 from E. B. Padrick to Sidney Engelhardt.
A 359
B & O 26
B & O 29 to 31, both inclusive
B & O 27 and B & O 28
B & O 32
A 72 (2nd) to A 77 (2nd), both inclusive
A 77a (2nd)
NYC 65 to NYC 67, both inclusive
Keeshin Ex. 14.
Keeshin Ex. 7
I. C. 43 and I. C. 44
A-164
A-589
A-646 to A-649, both inclusive
N. W. 89
A 638 and A 639
A-1
CUS-5
A 350 and A 351
A 642
A 637

606 Letter dated March 4, 1955 from Howard L. Willett, Jr. to S. W. Bone.
A 636 A 349
A 348 A 643 to A 645, both inclusive.
Letter dated February 4, 1955 from S. W. Bone to Howard L. Willett, Jr.
N. W. 149 and N. W. 150
A 548 to A 551, both inclusive
A 347
A 161 to A 163, both inclusive
A 634 and A 635

Keeshin Ex. 6-A.

A 504	A 630
A 552	A 631
A 632	A 629
A 633	A 705

Letter dated May 11, 1955 to J. L. Keeshin from NYS files.

A 628	A 704, A 704a, A 704b and A 704c
A 547	A 703
A 627	NY 304
A 625	

Keeshin Ex. 19.

N. W. 117 and N.W. 118.	A 87 (2nd) and A 88 (2nd)
A 331 and A 332	A 438
A 330	A 473
N. W. 167	A 160

Revised Statement—Parmelee Bills of Chicago Terminal Lines—1951-1953-Inc.

Documents identified at the deposition of Morris Markin, except the documents marked for identification as Markin Exhibits 3, 9, 10, 18, 20, 21, 24, 25, 28, 29, 30, 42, 44, 46, 48, 49, 51, 53 and 54.

A 190, A 194, A 231 and all other letters to E. B. Padrick in September 1955 by or on behalf of each of the twenty-one Chicago terminal lines, each authorizing E. B. Padrick to sign the contract with Railroad Transfer Service, Inc. on behalf of the railroad by or on behalf of whom the letter was transmitted.

607 These defendants also reserve the right to make use of documents listed by plaintiff without here repeating the listing.

These defendants also reserve the right to file an additional list of documents which it may use should the Court

overrule objections to be made by them at the pre-trial hearing.

Floyd E. Thompson,
Philip W. Tone,
Attorneys for Defendant Railroads and Railroad Presidents,
By *Philip W. Tone*

Thompson, Raymond, Mayer,
Jenner & Bloomstein
135 South LaSalle Street
Chicago 3, Illinois
RAndolph 6-0220
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IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

LIST OF DOCUMENTS OF THE THE NEW YORK CENTRAL RAILROAD COMPANY, ONE OF THE DEFENDANTS

(Filed October 22, 1958)

The New York Central Railroad Company, one of the defendants, adopts the List of Documents submitted by the other railroad defendants upon the same terms and conditions therein prescribed. In addition thereto, this defendant will make appropriate use upon the trial of this cause of the following documents which have been identified and coded by the parties, including duplicates thereof which also have been identified and coded:

Lettter dated January 29, 1954 from S. W. Bone to F. H. Baird.

Letter dated February 2, 1954 from F. H. Baird to S. W. Bone.

This defendant reserves the right to make appropriate use of documents listed by the other parties, including the plaintiff, without repeating the listing herein.

611 This defendant also reserves the right to revise and supplement its List of Documents should the Court overrule pre-trial or trial objections to documents listed or offered by the plaintiff.

Marvin A. Jersild
Charles I. Hopkins, Jr.
Attorneys for The New York Central Railroad, one of the Defendants
By *Charles I. Hopkins Jr.*

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IN THE UNITED STATES DISTRICT COURT
* * (Caption—No. 56 C 323) * *

LIST OF DOCUMENTS OF JOHN L. KEESHIN AND RAILROAD TRANSFER SERVICE, INC., DEFENDANTS

(Filed November 3, 1958)

The defendants, John L. Keeshin and Railroad Transfer Service, Inc., do hereby adopt the list of documents submitted by the other railroad defendants upon the same terms and conditions therein prescribed. In addition thereto, these defendants will make appropriate use upon the trial of this cause of the following documents, including duplicates thereof as follows:

Memos, notes, graphs, charts and schedules of surveys made by employees and representatives of said defendants prior to June 13, 1955, with respect to operations of transfer service between railroad stations in the Central Business District of Chicago.

There are certain issues presented by plaintiff's complaint herein which these defendants charged are not
613 material to the issue of the case, but if the Court should find said issues material, then these defendants reserve the right to present at the trial evidence and documents pertinent to said issues.

These defendants reserve the right to present in evi-

dence certain documents listed on plaintiff's list of documents, if plaintiff should fail to produce said documents.

In further preparation for trial and proposed depositions of plaintiffs, or during the course of the trial with respect to admissions by plaintiffs, it may be necessary to offer in evidence certain other documents not listed herein. These defendants expressly reserve the right to offer in evidence at the trial of this cause, additional documents which are not now available to these defendants, but which may hereafter become available through discovery and pre-trial procedures or independent investigation, and reserves the right to present at the trial of this cause such documents.

These defendants also reserve the right to file an additional list of documents which they may use should the Court overrule objections to be made by them at the pre-trial hearing.

Albert J. Meserow
Albert J. Meserow
Attorney for John L. Keeshin and
Railroad Transfer Service, Inc.,
Defendants

Albert J. Meserow
231 South La Salle Street
Chicago 4, Illinois
State 2-8500
614

IN THE UNITED STATES DISTRICT COURT
* * (Caption—No. 56 C 323) * *

OBJECTIONS OF DEFENDANT, HUGH W. CROSS, TO PLAINTIFF'S LIST OF DOCUMENTS

Now Comes, the defendant, Hugh W. Cross, by Charles F. Heugh, William F. Coale, Jr., and Louis A. Witry, his attorneys, and for convenience adopts each and every ob-

jection filed by the five defendant railroads and railroad presidents to plaintiff's list of documents which plaintiff intends to offer in evidence at the trial of this cause. In addition thereto, defendant, Hugh W. Cross, objects to the following documents that plaintiff intends to offer in evidence at the trial of this cause for the reasons that such documents are immaterial, incompetent or privileged:

Numbers 1, 2, 17, 19 through 30 inclusive, 42, 50 through 56 inclusive, 83 through 92 inclusive, and 94.

Charles F. Hough
Charles F. Hough
William F. Coale, Jr.
William F. Coale, Jr.
Louis A. Witry
Louis A. Witry

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In The United States District Court
* * (Caption—No. 56 C 323) * *

OBJECTIONS OF PARMELEE TRANSPORTATION COMPANY TO THE ADMISSION IN EVIDENCE OF DOCUMENTS APPEARING ON THE LIST SUBMITTED BY THE DEFENDANT RAILROADS AND RAILROAD PRESIDENTS

(Filed November 3, 1958)

A. The following documents are inadmissible because they contain or constitute mere estimates, opinions or conclusions rather than statements of fact:

1. Letter dated September 19, 1946 from L. W. Landman to H. W. Siddall.
2. Estimated Profit and Loss Statement for One Year Period from July 1, 1947 to July 1, 1948, dated 8/7/47.
3. A-557 and A-558.
4. Parmelee Company Estimated Loss of Revenue for the Year 1954 based on the Revenue for the

First Quarters for the Years 1952, 1953 and 1954, with Schedule Showing the Estimated Savings for the Year ending April 30, 1955, dated 4/26/54.

616 5. Parm. 140.

6. Document identified at the deposition of Morris Markin as Markin Exhibit 11.

7. Document identified at the deposition of Morris Markin as Markin Exhibit 38.

8. Document identified at the deposition of Morris Markin as Markin Exhibit 39.

9. Document identified at the deposition of Morris Markin as Markin Exhibit 40.

10. Document identified at the deposition of Morris Markin as Markin Exhibit 41.

11. Document identified at the deposition of Morris Markin as Markin Exhibit 43 A.

B. The following documents are inadmissible against the plaintiff because they contain or constitute hearsay evidence and self-serving statements not binding on the plaintiff:

1. A-21 and A-22.

2. Call for Meeting of Chicago Terminal Lines, December 30, 1947, dated December 20, 1947.

3. A-20 except the last paragraph thereof.

4. A-545 and A-546.

5. SF 17 and SF 18.

6. Letter dated March 12, 1951 from G. R. Kimbel to William Scheeder.

617 7. Memorandum dated 9/15/54 initialed D.J.H. to J.R.K.

8. Document identified at the deposition of Morris Markin as Markin Exhibit 8.

C. The purported carbon copy of a letter dated February 16, 1948 from "Chairman" to L. W. Landman,

Coded A (NS) 274 and marked "Personal" is inadmissible against the plaintiff on the ground that it constitutes a mere personal communication having no relevance to the issues in this litigation, but if relevant constitutes a mere self-serving statement in a document, the genuineness of which has not been established.

D. NY 289 is inadmissible because it is irrelevant to any issue before the court and its admission would merely tend to encumber the record.

Lee A. Freeman
Lee A. Freeman
Thomas C. McConnell
Thomas C. McConnell
John Paul Stevens
John Paul Stevens
Attorneys for Plaintiff, Parmelee Transportation Company

November 3, 1958.

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In The United States District Court
* * (Caption—No. 56 C 323) * *

OBJECTIONS OF DEFENDANT RAILROADS AND RAILROAD PRESIDENTS TO DOCUMENTS INCLUDED IN PLAINTIFF'S LIST.

(filed November 4, 1958)

Plaintiff, purporting to respond to the order of August 1, 1958, requiring it to furnish defendants with a list of documents which it intends to offer in evidence at the trial of this case, indiscriminately included a great mass of documents having no probative value and obviously immaterial to any issue made by the pleadings in this case and otherwise inadmissible. Defendant railroads and railroad presidents object to the admissibility of the follow-

ing documents on the grounds stated:

Plaintiff's List
Paragraphs

1, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 620 — Exhibits: Miller 1-9, Cross 2, Baird 1-9, Wilber 1-5, letter 7-19-55 Wilber to Cross, Diver 1-21, Deeds of 10-11-55, Deed of 11-9-55, Harris 1-6 and La Salle 1-9 all refer to the listing for sale and sale in 1955, of the residence in Maryland occupied by defendant Cross and his wife, and to the purchase of a residence in Deerfield, Illinois, in July, 1955. There is no evidence showing that any of the railroad defendants or the railroad presidents had any knowledge of or connection with these transactions and all of said documents are hearsay as to said defendants. The documents and the testimony connected therewith relate to the issues of who owned the Maryland property, when that property was listed and why it was sold, and whether the Deerfield property was bought for a residence for Mr. and Mrs. Cross or for their daughter and son-in-law who were then in Germany. These issues are collateral to the issues made by the pleadings and will involve substantial trial time, will divert the attention of the jurors from the real issues, and will prejudice these defendants. All of these documents and the testimony in connection therewith relate to collateral issues and are immaterial.

30,33 — The deed of July 18, 1956, and La Salle 10-11B relate to the sale in 1956 of the Deerfield residence by the owners, Hugh E. Cross and Barbara Johnson, children of defendant Cross, to Morton E. Klein and Florence B. Klein. Mr. Klein is an employee of Pennsylvania Railroad. A deposition of Klein taken by plaintiff shows that Klein was

offered the property by an independent real estate broker, that he purchased the property with his
621 own funds and that he did not then have any knowledge of the history or business of Hugh W. Cross or of his identity as a former member of the Interstate Commerce Commission. These documents are immaterial. Allowing plaintiff to prove the sale of this property to Klein and coupling this with the fact that Klein is an employee of Pennsylvania would be admitting evidence highly prejudicial to all of these objecting defendants. Introduction of this collateral issue would require defendants to prove, among other things, that Klein found the house through an independent real estate broker, that he had no knowledge of the identity of the owners, and that the Pennsylvania Railroad had no knowledge of or connection with the transaction. Trial of these collateral issues would confuse the real issues, distract the attention of the jury, needlessly consume much trial time, and otherwise prejudice these defendants in nowise connected with the transaction.

2, 37 The telegram of 5-26-55 from Johnston, President of Illinois Central, to Cross, and Johnston exhibits 3 and 4, his diary and appointment sheets, contain no reference to any matter involved in this litigation and are immaterial. These documents are also hearsay as to all these defendants other than Johnston.

3 Exhibits C. & P. 1-91 are records of Chesapeake
622 & Potomac Telephone Company showing toll charges to B. & O. telephone numbers. These documents are immaterial as to all these defendants and are hearsay as to all defendants except Simpson and B. & O. R. Co.

4 Exhibits Simpson 1 and 3 are affidavits furnished by Simpson to the Senate Committee on Investigations and exhibit 2 is a letter from Simpson to counsel for this Committee. These documents are immaterial and they are hearsay as to all defendants except Simpson. Their admission would be highly prejudicial to all defendants. Exhibit 4 is a letter from B. & O. general counsel to Washington local counsel referring to excusing Simpson's appearance before Senate Committee. It is a privileged communication, is immaterial to any issue and is hearsay as to all defendants. Its admission would be highly prejudicial. Exhibit 5 is Simpson's appointment book for 1955 and exhibit 6 is his secretary's appointment book. These documents are immaterial and hearsay as to all defendants except Simpson. Exhibit 7 is the subpoena issued to Simpson by the Senate Committee and is immaterial and its admission would be prejudicial. Exhibit 8 is the subpoena duces tecum issued to Simpson in this case and is obviously immaterial.

5, 6, 623, 7, 8, 9, 13 Exhibits: Whittington 7 is Whittington's 1955 appointment book. It is immaterial and hearsay as to all defendants. Exhibit 8 is the transcript of proceedings of American Association of Passenger Officers for May 2 and 3, 1955, and is irrelevant and hearsay. Documents described in pars. 6-8 are Madison Hotel, Atlantic City, records showing presence of Mr. & Mrs. Whittington on April 8 to 11, 1955, and a letter pertaining thereto, and are immaterial and hearsay as to all defendants. Exhibits 1A-6 are Taft Hotel, New York, records showing Whittington's presence there immediately preceding Atlantic City visit,

and they, and Thompson transmittal letter of 4-8-57, are immaterial and hearsay as to all de-
10 fendants. Carpi exhibits 2 and 4 refer to complimentary letter to Holt for good job done as chairman of committee dealing with Chicago transfer problem and are immaterial and hearsay as to all defendants. Carpi 3 and 5A-5M refer to conferences and correspondence with I.C.C. commissioners respecting subject of users cleaning freight cars, and all are irrelevant and hearsay as to these defendants.

11 This letter and attachments show the composition of the Executive Committee of Eastern Railroad Presidents Conference in 1955, and the members present at its meetings. This is immaterial and hearsay as to all these defendants.

12, 14 Exhibits: Forgash 2-36 and other New York
15, 39 Telephone Company statements cover toll calls
624 and telegrams charged to telephones listed in name of Forgash and United States Freight Company in 1955. These are immaterial and hearsay as to all defendant railroads and railroad presidents. Ennis 1-10B and Youdell 1-17A are records of Washington hotels and Ambassador 1-8 are records of a Chicago hotel showing Forgash's presence on various dates in 1955. These are immaterial and hearsay as to all these defendants.

16, 17 Exhibits: Ryan 2-7 are Chesapeake & Potomac Telephone Company statements of United States Government official toll service, unidentified with any defendant, and are irrelevant and hearsay. Ryan 8-9 are I.C.C. tickets showing toll calls by Commissioner Cross to persons not identified with this litigation, and are immaterial and hearsay. Ryan 10A-10B is an I.C.C. bulletin on toll calls and

is irrelevant and hearsay. Item 17 are travel vouchers by Cross to Commission covering March 1955 trips, and are immaterial. These documents are not identified with any of these objecting defendants and are hearsay as to all of them.

18 This item is the appointment book of Perlman, NYC President, and is immaterial and hearsay as to all defendants.

19, 20, 625 Item 19 is the printed transcript of hearings before the Senate Committee involving Cross, and Item 20 are pages of the report of this Committee respecting Cross. These documents are immaterial as to all these defendants and their admission in evidence would be highly prejudicial. Item 20 is a statement of a stranger to the litigation and is hearsay as to all these defendants. Item 19 is hearsay as to all defendants except those whose testimony is reported and as to these except as to his own testimony. The fact that a Committee of the Senate conducted an investigation and held hearings as to Cross' conduct as Chairman of the I.C.C. is irrelevant to any issue in this litigation. An introduction of the fact of the hearing or of allowing the fact to get to the jury would be highly prejudicial to these objecting defendants.

21 Parmelee 1-8 are records of the Union League Club of Chicago showing that Cross was a guest there on certain days in 1955. These documents are immaterial and hearsay as to all these objecting defendants.

34 CAA 2-7 are records of Chicago Athletic Association and pages from its magazine relating to parties by Ben Regan on June 1-2, 1955. Vice-President Nixon attended the June 2 party, and

defendant Cross with many other persons attended both parties. These documents are immaterial and hearsay as to all these defendants.

35 Whittington 2 is an undated pencilled memor-
626 andum which appears to show the percentage of Parmelee charges paid by each of the Chicago Terminal Lines during a period when Parmelee served as transfer agent. It is immaterial and hearsay as to all these defendants.

36 Holt 2-7 are pencilled notes and memoranda regarding various phases of the transfer contract negotiations. They are hearsay as to all defendants.

38 Illinois Bell 1 through 4W are about 100 slips of Illinois Bell Telephone Company showing calls charged to defendant Keeshin. All of these are immaterial as to all of these objecting defendants.

40 This item is a letter of 8-10-55 from Fawcett of New York Central and Jenks of Rock Island to Parmelee and others. It is immaterial and hearsay as to all defendants.

41 Le Seuer 1 is a mimeographed letter containing certain pencilled notations which are hearsay. Le Seuer 2 consists of excerpts from a report on the June 13, 1955 meeting and is hearsay as to all defendants. Le Seuer 3-4 is correspondence regarding the Nickel Plate contract with Parmelee and is immaterial and hearsay as to all defendants. Le Seuer 5 is an internal Nickel Plate memo and is hearsay. Le Seuer 6 is a letter regarding transfer of passengers at Englewood station and is irrelevant and hearsay. Le Seuer 7 consists of
627 pencilled notes made after the termination of the Parmelee service and contains a reference to the

Senate investigation. It is immaterial and hearsay as to all defendants.

42 Gurley 1 and 2 are affidavits of Fred Gurley, Santa Fe President, furnished to Senate Committee. They are immaterial and hearsay as to all defendants except Gurley.

43 Sullivan 2-4 are internal Soo Line memoranda and are immaterial and hearsay as to all defendants.

44 Exhibits: Keeshin 1, District Court subpoena, and 2, Senate Committee subpoena, are immaterial. Keeshin 3-4, Senate Committee telegrams to Keeshin, and 5, Keeshin telegram to Committee, are immaterial and hearsay as to all these defendants and their admission would be highly prejudicial. Keeshin 8, confirmation of purchase of 50 sedans, ten station wagons and 15 tractors from Litsinger by Keeshin on June 1, 1955, is immaterial and hearsay as to all these defendants. Keeshin 9 relates to ordinary operations after October 1, 1955 take-over by Railroad Transfer Service, Inc. and is irrelevant. Keeshin 15-A is immaterial and hearsay. Keeshin 16-16C is immaterial and hearsay as to these defendants. Keeshin 17-17B are immaterial and hearsay as to these defendants. Keeshin 20 is immaterial. Keeshin 21 is memo of June 15, 1955, Keeshin to Baxter, and relates
628 to routine preparation for take-over by Railroad Transfer Service, Inc. and is immaterial and hearsay as to these defendants. Keeshin 22 is an anonymous letter and is immaterial and hearsay. Keeshin 23 appears to be Keeshin internal memo and is immaterial and hearsay as to these defendants. Keeshin 24 is post take-over letter, Litsinger to Keeshin, and is irrelevant and hearsay

Keeshin 25 and 26 are communications from Litsinger to Senate Committee and are immaterial and hearsay as to these defendants and their admission in evidence would be highly prejudicial. Keeshin 27 is Freuhauf Trailer Company—Railroad Transfer Service, Inc. sale contract of November 25, 1955 and is irrelevant and hearsay as to these defendants. Keeshin 28 is internal Railroad Transfer Service, Inc. memorandum of November 4, 1955 and is irrelevant and hearsay as to these defendants. Keeshin 29-30D and 32-32B are communications relating to details of formalizing contract between Railroad Transfer Service Inc. and the Chicago terminal lines and are immaterial to any issue made by the pleadings. Keeshin 31-31-A relate to pick-up and delivery rates and are immaterial. Keeshin 33-35 are memoranda, Baxter to Keeshin, respecting C. A. Conklin Truck Line, Inc. operations and are immaterial and hearsay as to these objecting defendants. Keeshin 36
629 is an order and appendix thereto of June 7, 1955 of Interstate Commerce Commission respecting Conklin and is immaterial and hearsay as to these defendants. Keeshin 37-37-C are Keeshin internal memoranda and are immaterial and hearsay as to these defendants. Keeshin 38 is a Keeshin internal memorandum of June 21, 1955 relating to discussions with baggage man relating to take-over prablems and is immaterial and hearsay as to these defendants. Keeshin 39 relates to formalizing contract between RTS and CTL and is immaterial. Keeshin 40-40A are unsigned handwritten notes and are immaterial and hearsay. Keeshin 41-41B is an undated memorandum from Kazanow to Keeshin and is immaterial and hear-

say. Keeshin 42 and 43 are letters in September 1955 from Fenner to Keeshin relating to labor contract for RTS employees and Keeshin 44 is a letter by Fenner to the employees respecting the contract and Keeshin 45 is a letter from Fenner of Chicago Truck Drivers, etc., Local 705, to George M. Harrison of Brotherhood of Railway, etc. Station Employees respecting Local 705 representing all RTS employees, and are immaterial to the issues made by the pleadings and are hearsay as to all these objecting defendants. Keeshin 46-50 relate to equipment purchases by Railroad Transfer Inc. following awarding of contract to RTS and are immaterial and hearsay as to these objecting defendants. Keeshin 51 with attachments relate to baggage pick-up and delivery
630 service charges following take-over by RTS and is irrelevant. Keeshin 52, 53 and 56 are correspondence with Interstate Commerce Commission respecting Conklin and are irrelevant and hearsay as to these objecting defendants. Keeshin 54 and 55 are Keeshin internal memoranda and are immaterial and hearsay as to these defendants. Keeshin 57 and 58 are Baxter memoranda respecting meetings between Keeshin and the committee of six, May 19 and June 3, 1955, and are hearsay as to these objecting defendants. Keeshin 59 is an eight page printed wage contract between RTS and Local 705 effective October 1, 1955 through September 30, 1961 and is irrelevant to the issues made by the pleadings and is hearsay as to these objecting defendants. Keeshin 60-61 relate to some transactions between Keeshin and Marshall Field & Company in the summer of 1955 and are irrelevant and hearsay as to these objecting de-

fendants. Keeshin 62 is a tabulation of dollar amounts of transactions between Truck Rail Terminals, Inc. and certain of Chicago terminal lines and is immaterial to the issues in this litigation.

45, 46, 47, 651 — The items enumerated in these paragraphs are applications for certificates of title filed by RTS with Secretary of State covering certain motor vehicles. These documents are immaterial to any issue in this case and are hearsay as to these objecting defendants.

48 — This item is a letter from B. F. Goldstein to R. J. Daley, Mayor, September 24, 1955, and is irrelevant and hearsay.

49 — This item consists of the annual reports to stockholders for 1954 and 1955 issued by the six defendant railroads. These documents are immaterial to any issue made by the pleadings and they are hearsay except as to the respective railroads.

50, 51, 52, 53, 54, 55, 56 — These documents relate to business transactions of Carrollton Farm Supply Company and Hugh E. Cross, son of defendant, Hugh W. Cross, in January, March and April 1955, and are not identified with any of the defendant railroads or railroad presidents. They are immaterial to any issue made by the pleadings and hearsay as to these defendants and their admission in evidence would be highly prejudicial to defendants.

57 — The documents in this group were selected from Santa Fe files by plaintiff during pre-trial discovery proceedings. SF 1-3 are Senate Committee telegrams and subpoena to Gurley and are irrelevant and their admission would be highly prejudicial to defendants. SF 4-9 relate to routine

matters after the take-over of the service by Railroad Transfer Service, Inc. on October 1, 1955, and
632 are irrelevant. SF 10 is an internal Santa Fe memo from Duffy to Gurley and is immaterial and hearsay as to these objecting defendants. SF 29-36 relate to formalizing the contract between RTC and CTL after the awarding of the contract to Railroad Transfer Service, Inc. and are immaterial. SF 37-85 are Santa Fe internal memoranda and unsigned handwritten notes and are all immaterial to the issues in this litigation and are hearsay as to all defendants. SF 90-94 relate to a proposed terminal charge to cover transfer service and are irrelevant. SF 95-99 are more internal Santa Fe memos and are immaterial and hearsay. SF 100-124 are documents relating to routine matters after the RTS take-over on October 1, 1955, and are irrelevant.

58 These are [illegible]uments selected by plaintiff from the files of B. & O. R. Co. B. & O. 1-12 are internal memoranda in June and July, 1955 relating principally to routine matters in preparation for take-over by RTS and are immaterial and hearsay. B. & O. 13-14 is an unsigned memorandum reporting on the June 13, 1955 meeting and is hearsay as to all these objecting defendants. B. & O. 15-17 is 1933 correspondence and is immaterial. B. & O. 18-20 is an unsigned memo on June 3, 1955 meeting and is hearsay. B. & O. 21-22 is an unsigned
633 memo on June 2, 1955 equipment inspection and is hearsay. B. & O. 23-25 are B. & O. internal memoranda and are immaterial and hearsay. B. & O. 26-32 is the Parmelee annual report and B. & O. 33-42 is a Dunn & Bradstreet report on Kee-

shin and they are immaterial and hearsay. B. & O. 43-70 and B. & O. internal memoranda and are immaterial and hearsay. B. & O. 71-76 relate to routine matters during take-over and are immaterial and hearsay. B. & O. 79-102 are pencilled notes and memoranda and are immaterial and hearsay. B. & O. 106-117 are pencilled notes and internal memoranda and are immaterial and hearsay. B. & O. 118-147 relate to routine procedures after take-over by RTS on October 1, 1955 and are irrelevant and hearsay. B. & O. 148-149 are internal memoranda and are immaterial and hearsay. B. & O. 150-151 relate to routine matters on take-over and are immaterial and hearsay. B. & O. 152 is a draft of press release and is immaterial and hearsay. B. & O. 153-157 are internal memoranda and are immaterial and hearsay. B. & O. 158-178 is the formal Railroad Transfer Service, Inc. agreement of October 1, 1955. The making of the contract is admitted by the pleadings and the details are immaterial. B. & O. 179-190 are September 1955 internal memoranda relating to routine matters connected with the take-over and are immaterial and hearsay. B. & O. 191-209 are
634 connected with formalizing the RTS contract and are immaterial. B. & O. 210-214 are August 1955 pencilled notes and internal memoranda relating to the routine of the take-over and are immaterial and hearsay. B. & O. 215 is an internal memorandum of December 21, 1951 respecting Parmelee labor problems and is hearsay. B. & O. 282-294 relate to routine matters after RTS take-over October 1, 1955 and are irrelevant and hearsay.
59 These are documents taken by plaintiff from Northwestern files. NW-F 1-4 is a four page

memorandum of Brennan reviewing for Feucht the history of the negotiations and considerations for changing from Parmelee to RTS service and is hearsay as to all railroads and as to all railroad presidents except Feucht. NW- 5-7 relate to the Senate Committee Investigation and are immaterial and hearsay. NW-F 8 and 16 are copies of a memo by Feucht reporting a telephone conversation with Cross on May 13, 1955 and are hearsay as to all defendant railroads and defendant presidents except Feucht. NW-F 9 is an internal memorandum and is immaterial and hearsay. NW-F 10 is a clipping from the Chicago Tribune of September 20, 1955 and is immaterial and hearsay. NW-F 11-15, 16A-17, 21-22 and 24-25 are memoranda from Small to Feucht and are immaterial and hearsay as to all these objecting
685 defendants except Feucht. NW-F 48-53 is a February 1946 report on an investigation of Parmelee charges and is immaterial and hearsay. NW 61-63 is a report by Small to Feucht on the June 13 meeting and is hearsay as to all these objecting defendants except Feucht. NW 64 is a memo from Brennan to Norton and is hearsay. NW 68-69 is a memo from Small to Feucht and is hearsay as to all except Feucht. NW 70-74 is a memo from Brennan to Small and is immaterial and hearsay as to all objecting defendants. NW 75 and 141 are copies of Feucht memoranda of the Cross conversation and are hearsay. NW 76-78 are internal memoranda and are immaterial and hearsay. NW 79. is a memo from Small to Feucht with a note of EJM and is immaterial and hearsay as to all except Feucht. NW 80, 81, 83, 88 and 90-97 are internal memoranda and are immaterial hearsay

as to all these objecting defendants. NW 82, 87 and 90 are memos from Small to Feucht and are hearsay as to all except Feucht. NW 130-140 are internal memoranda and are hearsay as to all these defendants. NW 142, 143 and 146 are internal memoranda and are immaterial and hearsay. NW 147 is a memo from Small to Feucht and is hearsay as to all except Feucht. NW 148-157 are internal memoranda and are immaterial and hearsay. NW 161 is a telegram from Cross to Feucht
636 May 25, 1955 and is hearsay as to all these objecting defendants except Feucht. NW 162 relates to formalizing the RTS contract and is immaterial. NW 163-4 relate to take-over procedures and are immaterial. NW 165 relates to routine matters after the take-over and is irrelevant. NW 166 is a report from Brennan to Norton on June 13, 1955 and is hearsay. NW 167-197 is a report by Winkler and Padrick to railroad representatives and is immaterial and hearsay. NW 198-199 is a letter from Seddal to Mayor Daley and is immaterial and hearsay. NW 200 is a communication by Padrick to the negotiating committee and is hearsay. NW 201-202 is a letter from Padrick to Chicago Vehicle Commissioner and is immaterial and hearsay. NW 203-208 relate to routine procedures on take-over and are immaterial and hearsay. NW 220-222 are memoranda and pencilled notes and are immaterial and hearsay. NW 224-288 relate to routine matters after take-over by RTS on October 1, 1955 and are irrelevant. NW 289-291B relate to routine change-over matters and are immaterial. NW 292-319 relate to matters following take-over by RTS and are irrelevant. NW 320-327 is a memorandum of Parmelee

service history and is immaterial and hearsay. NW 328 is a memo from Brennan to Poulson and is immaterial and hearsay. NW 329-335 relate to baggage reports in March 1954 and are immaterial and hearsay. NW 336 relates to post take-over matters and is irrelevant. NW 337-355 are internal memoranda and pencilled notes and are immaterial and hearsay. NW 356-369 relate to routine operations after take-over and are irrelevant.

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60 This item includes documents withdrawn by plaintiff from the Pennsylvania Railroad files. P 4-5 is a memorandum on release of news of the awarding of the contract to RTS and is immaterial and hearsay. P 17-25 and 27 are internal memoranda and are immaterial and hearsay. P 26, 29-34 and 36 relate to routine matters after the takeover by RTS on October 1, 1955 and are irrelevant. P 35 is an unsigned handwritten note and is immaterial and hearsay. P 37 is a routine memo on the take-over and is immaterial and hearsay. P 38-61 are internal memoranda and are immaterial and hearsay. P 43A is a clipping from the Chicago Daily News and is immaterial and hearsay. P 62-66 relate to routine matters after October 1, 1955 and are irrelevant.

61 This item includes documents withdrawn by plaintiff from the files of the Illinois Central. IC-J 1-3 are memoranda from Trovillion to Johnston and are immaterial and hearsay. IC 13-14 is a general memorandum respecting the take-over on October 1, 1955 and is immaterial and hearsay. IC 15-27 are internal memoranda between persons other than defendants and are immaterial and hearsay. IC 28-29 are unsigned pencilled notes

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respecting June 2, 1955 telephone conversations and IC 29a and b are unsigned pencilled notes apparently made at the June 3, 1955 meeting and all are immaterial and hearsay. IC 31 and IC 38-41 are internal memoranda and are immaterial and hearsay. IC 44 is a copy of a news item on labor wage agreement and is immaterial and hearsay. IC 45-47, 52-55 and 60 are internal memoranda and immaterial and hearsay. IC 61 is a copy of a letter from Padrick to Keeshin and is immaterial and hearsay as to these defendants. IC 63-72 are memoranda between others than defendants and are immaterial and hearsay. IC 73 is a letter relative to the settlement of the alleged Parmelee deficit of January through March, 1954 and is immaterial and hearsay. IC 74-79 are memoranda between others than defendants and are immaterial and hearsay. IC 80-108 involve routine matters after October 1, 1955 and are irrelevant. IC 109 is a letter respecting the interpretation of a clause of the RTS agreement and is immaterial. IC 110 is a memo on take-over of the service by RTS and is immaterial. IC 112 is a memorandum on giving service if RTS service is interrupted
639 and is immaterial. IC 113 is a memorandum respecting the take-over and is immaterial. IC 114 through 153 are documents relating to the formalizing of the RTS agreement and are immaterial. IC 154-156 are memoranda between others than defendants and are immaterial and hearsay. IC 157 is a copy of a communication by Parmelee to its employees and is immaterial and hearsay. IC 158-166 are memoranda between others than defendants and are immaterial and hearsay. IC 167 is a memo by RPS and pencilled notations and is

immaterial and hearsay. IC 168-196 relate to routine matters after October 1, 1955 and are irrelevant. IC 197-198 is a copy of letter of Padrick to Chicago Vehicle Commissioner and is immaterial and hearsay. IC 199-200 and 202 relate to post take-over routine and are irrelevant. IC 201 and 203 relate to routine in course of take-over and are immaterial. IC 204 relates to routine of Parmelee service and is immaterial. IC 205-208 are unsigned pencilled notes and are hearsay.

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62 This item includes documents selected by plaintiff from files of New York Central. NYC 2 is Tribune news article on change of transfer service and NYC 1 is memo transmitting and they are immaterial and hearsay as to all these defendants. NYC 3-4 is a published baggage tariff and is irrelevant. NYC 6, 37-44, 49-58, 63, 68-72, 90-92, 192, 228-232, 251, 256-263, 265-267, 313 and 340-341 are internal memoranda between others than these defendants and are immaterial and hearsay. NYC 9-10, 11-15, 16-20, 21-22, 25, 27, 47, 79 and 149 relate to routine matters in connection with change-over from Parmelee to R.T.S. and are immaterial. NYC 23, 24 and 28-34 relate to formalizing contract between RTS and CTL and are immaterial. NYC 26, 35, 48, 59-62, 64, 93, 150-151, 160-161, 172, 176-185, 202, 203-205, 327-329 and 342 relate to routine of Parmelee operations and are immaterial. NYC 36 is Daily News item rechange of service and is immaterial and hearsay. NYC 45, 46, 221-227, 275, 297-299, 304, 316 and 323 are memoranda between others than defendants and are immaterial and hearsay. NYC 73-76, 145-148, 193-201, 233-236, 343-345 and 349-352 relate to routine matters after

take-over by RTS on October 1, 1955, and are irrelevant. NYC 77-78 relate to 1940-41 proceedings and are immaterial. NYC 80-87 is transportation notice of 5-26-55 and correspondence covering group movements of Boston Red Sox and is irrelevant. NYC 94-134 are personal notes of Bone respecting meetings of sub-committee of six railroads and are not from New York Central files and are immaterial and hearsay as to all defendants. NYC 162-171 and 317-322 refer to proposed transfer charge to be included in thru ticket charge and are immaterial and hearsay. NYC 237-242 and 300-302 relate to Senate Committee investigation of Cross and are immaterial and hearsay and prejudicial to these defendants. NYC 243-248, 249-250, 252-253, 264, 277-283 and 346 are unsigned notes and memoranda and are immaterial and hearsay. NYC 285-296 are correspondence and memoranda relating to 1951 study of transfer service and are immaterial and hearsay.

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There are two sets of documents marked NYC 277 through 302. The second set of duplicate numbers are those taken from the New York Central files kept in New York. Of these NYC 277-282 are communications between New York Central men from May 20 to June 20, 1955 covering Chicago transfer proposals and making recommendations. All these defendants, except New York Central, object to these documents as hearsay. NYC 283-284 are duplicates of NYC 68-69 to which defendants have objected as immaterial and hearsay. NYC 285-289 of this group are internal memo-

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randa concerning Parmelee operations and are immaterial and hearsay. NYC 290-295 are 1946 memoranda and correspondence and are irrelevant

and hearsay. NYC 296-297 are internal memoranda and are immaterial and hearsay. NYC 298 is a Chicago Tribune article of 12-2-55 and NYC 299 is a Chicago Daily News article of 1-20-56 and both are immaterial and hearsay. NYC 300-303 are memos relating to a routine of the change-over of service and are immaterial and hearsay.

NYC 186-188, 265-266, 307, 308-309, 310-312, 314, 315, 324-326, 330-332, 333, 334, 335-337, 347, 348 and 349 are documents bearing lower code numbers and objections to them have been made under earlier numbers.

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63 This item includes documents taken by plaintiff from the files of Western Passenger Association. A2-5 and A12 are, respectively, proceedings of the meetings of Chicago terminal lines of 8-11-54 and 1-5-55 relating to a proposed Chicago terminal transfer charge to be included in through-ticket charge, and are immaterial to the issues made by the pleadings. A8 is proceedings of Chicago terminal lines for 4-26-54 covering many subjects and all of the report is immaterial except that referring to Parmelee coupon rates. A71-78, A121-124 and A127 are documents relating to routine matters subsequent to R. T. S. take-over on 10-1-55, and are irrelevant. A152-153 relate to negotiations of formalizing R. T. S. contract, and are immaterial. A185-186, A189 and A191-193 are documents relating to routine matters subsequent to take-over and are irrelevant. A195 relates to terminal charge proposal and is immaterial. A196-204 relate to routine matters pertaining to change-over and are immaterial. A205-208 relate to routine matters after take-over and are irrelevant.

A209 refers to routine matters on change-over and is immaterial. A210-211 relates to adjusting Parmelee charges on transfer of the remains and is irrelevant. A215-225 and A229 relate to routine
644 matters after R. T. S. take-over and are irrelevant. A226 and A230 relate to routine matters on change-over and are immaterial. A232-236 relate to routine matters after take-over and are irrelevant. A237-243 relate to routine matters of change-over and are immaterial. A245-246 and A248-249 relate to accounting on transfer of remains and are immaterial. A247 relates to a proposed terminal charge and is immaterial. A250-265 relate to routine matters and are immaterial. A266-271 relate to the proposed terminal charge and are immaterial. A272-273 is immaterial. A274-280 and A286 relate to routine matters subsequent to take-over and are irrelevant. A287 relates to Parmelee charges after R. T. S. take-over and is immaterial. A288-289 and A296 relate to routine matters on change-over and are immaterial. A290-291 relates to charge for clergy, and is immaterial. A294-295 refers to a proposed lawsuit respecting Chicago city ordinance, and is immaterial. A297 refers to routine matters after take-over and is irrelevant. A298-300 is immaterial. A312-320 relate to routine matters on change-over and to formalizing contract, and are immaterial. A321-324 relate to dealings with Parmelee in July, 1955, and are immaterial. A325-326, A327-329H, A349A and A-398-419 relate to miscellaneous routine matters and are immaterial. A360 relates to the pro-
645 posed terminal charge and is irrelevant. A420-425 relate to matters subsequent to the take-over and are irrelevant. A426-437 relate to routine

matters on change-over and formalizing agreement, and are immaterial. A439-441, A443, A447-451 and A454-466 relate to routine matters subsequent to take-over and are irrelevant. A442, A444-446, A453, A467 and A469 relate to routine matters concerning change-over and are immaterial. A470-502 and A511 relate to routine matters in formalizing R. T. S. contract, and are immaterial. A503, A508-510 and A514-518 relate to routine matters involved in change-over, and are immaterial. A519 relates to the 1954 arrangement for transferring passengers to and from Englewood Station, and A520 relates to the 1954 arrangement for transfer of baggage where there is less than a three-hour margin of time, and both are irrelevant. A521-526 and A559 relate to routine of formalizing R. T. S. contract and are immaterial. A531-546 relate to negotiations with Railway Express Agency in 1948-49 and are irrelevant. A553-554 is a self-serving letter of Markin, telling of extra Parmelee services rendered without charge, and is immaterial and otherwise inadmissible. A557-558 is a self-service Parmelee
646 letter showing an alleged investment of $2,320,000 and its 1947-48 operating results, and is immaterial and otherwise inadmissible. A561-562 relate to routine matters subsequent to take-over and are irrelevant. A564-566 is a letter from the Senate Committee returning documents produced under subpoena, and its admission would be prejudicial. A567, A569, A573-575, A577-588, A598, A601, A689 and A711-712 relate to a proposed terminal charge, and are immaterial. A568 is a document relating to subject of reducing Parmelee operating cost by limiting service, and is

immaterial. A570 is a report on payments to Parmelee and of coupons not picked up, and is immaterial. A571-572 is routine on Parmelee service in 1944 and is immaterial. A592-593 relate to post take-over routine and are irrelevant. A594-595 relates to passenger complaint in 1947 and is immaterial and hearsay. A596-597, A662, A673-678, A689 and A714-715 relate to Parmelee service routine and are immaterial. A599 and A692 relate to take-over routine and are immaterial. A717-718 is a Litsinger affidavit re Keeshin purchases, and A719 is a Litsinger letter re loan of station wagons for testing, and A720 is a statement of Trimmel re return to Litsinger of two of loaned station wagons, all prepared for and sent to the Senate Committee, and are immaterial and hearsay as to objecting defendants and their admission would be highly prejudicial to these defendants.

647 A721-723 relate to post take-over routine and are irrelevant.

64 Included in this item are documents from the files of LaSalle Street Station. LaS. 1-10 all relate to routine matters after the take-over of the service by R. T. S. on October 1, 1955 and are irrelevant. LaS. 11 and LaS. 12 are memoranda between persons other than defendants and are immaterial and hearsay.

65 These documents were produced from the files of Chicago Union Station. CUS 1-10 are memoranda between persons other than defendants and are immaterial and hearsay. CUS 11 and CUS 12 refer to R. T. S. routine operation matters after take-over and are irrelevant.

66 The clipping from the Wall Street Journal of 7-12-55 is immaterial and hearsay.

67 The proceedings of the meeting of Chicago terminal lines of 1-29-49 relating to a Railway Express proposal for taking over transfer of baggage are immaterial. The proceedings of the meeting of Chicago terminal lines of 5-13-49 refer to the possibility that a railroad may wish to make an individual contract arrangement with Parmelee. The proceedings of the meetings of Chicago terminal lines of 8-11-54 and 2-1-55 and the docket and digest and proceedings of the meetings of 5-2-56 and 11-12-56 relate to a proposed Chicago
648 terminal transfer charge to be included in the through ticket charge. The docket and digest and proceedings of the latter two meetings also deal with routine matters arising long after the take-over by Railroad Transfer Service, Inc. The proceedings of the meetings of Chicago terminal lines of 9-9-55, 9-14-55 and 9-15-55 relate to routine matters in connection with the change-over from Parmelee to Railroad Transfer and to claims for an accounting then being asserted by Parmelee against the railroads. All of these reports of proceedings are immaterial to any issue made by the pleadings.

68 The copy of agreement between Parmelee and the Nickel Plate dated 3-1-41 and agreements supplemental thereto are immaterial.

69 The letter dated 6-3-53 from Bone to Markin and attachment relate to a radio announcement congratulating Parmelee on its 100th Anniversary. They are immaterial and hearsay.

70 The letter dated 10-17-46 from Siddall to Johnston relating to Parmelee is immaterial and hearsay.

71 The letter dated 3-8-55 from Padrick to Markin is immaterial and hearsay.

72 The memorandum dated 9-28-53 from Holt to Comer is hearsay.

73, 74, 75, 76, 77, 78 and 79 649 These documents are letters of congratulations in May 1953 from employees of certain of defendant railroads to Parmelee on its 100th Anniversary. They are immaterial and hearsay.

80 This letter of 9-8-54 from Coleman to Scheeder complimenting Parmelee on the transfer of service men is immaterial and hearsay.

81 This letter of 3-24-55 from Baird to Markin commenting on Parmelee's proposal of 3-24-55 is immaterial and hearsay.

82 This letter dated 5-17-54 from Bruce to Markin thanking Markin for a luncheon is immaterial and hearsay.

83 The Code of Ethics for Practitioners before the Interstate Commerce Commission is irrelevant and immaterial.

84 The 69th Annual Report of the Interstate Commerce Commission dated 11-1-55 is irrelevant and immaterial.

85 The Organization minutes of the Interstate Commerce Commission of 3-1-55 and 7-1-55 relating to the organization of divisions and boards and assignment of work is irrelevant and immaterial.

86-94 Items 86-92 and 94 are decisions of the Interstate Commerce Commission in various cases from 3-12-54 to 10-19-55. Item 93 is a transcript of part of the oral argument before the Commission in one of these cases. The subject matter of these

cases has no relationship to the subject matter of the case at bar. The documents and the cases to which they refer are irrelevant and immaterial. On November 12, 1956, Judge Sullivan ruled that
650 plaintiff was not entitled to discovery with respect to one of the cases referred to, the so-called coal rate roll-back case, on the ground that plaintiff had shown no relationship between that case and the case at bar. Pursuant to this ruling, he overruled plaintiff's motion to compel a deponent to answer certain questions with respect to that case and quashed plaintiff's subpoena on defendant North Western calling for the production of documents relating to that case. On November 13, 1957, Judge Sullivan sustained defendants' objections to plaintiff's interrogatories seeking to require defendants to list and describe cases pending before the Commission. If the court were to permit plaintiff to introduce evidence of decisions of the Commission in matters unrelated to the case at bar, the court would also be required to permit a retrial of the merits of each of those matters pending before the Commission so that the jury could determine whether they were correctly and properly decided. If it were material that Commissioner Cross voted in favor of defendant railroads in a given matter, it would also be material that he voted against them in another matter, and it would therefore be necessary to examine each of the thousands of cases pending before the Commission during the period in question. Opening this irrelevant and collat-
651 eral inquiry would prolong the trial of this case

by months and would obviously distract the jury from the issues before it. A trial of these collateral issues would be highly prejudicial to these objecting defendants.

Marvin A. Jers d
Charles I. Hopkins Jr.
Attorneys for New York Central
Floyd E. Thompson
Philip W. Tone
Attorneys for other defendant railroads and presidents.

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

OBJECTIONS OF DEFENDANTS, JOHN L. KEESHIN AND RAILFOAD TRANSFER SERVICE, INC., TO PLAINTIFF'S LIST OF DOCUMENTS

(Filed Nov 5, 1958)

Now Comes, the defendants, John L. Keeshin and Railroad Transfer Service, Inc., by Albert J. Meserow, their attorney, and for convenience adopts each and every objection filed by the five defendant railroads and railroad presidents to plaintiff's list of documents which plaintiff intends to offer in evidence at the trial of this cause.

Albert J. Meserow
Albert J. Meserow
231 South La Salle Street
Chicago 4, Illinois
State 2-8500
Attorney for Defendants

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MOTION OF DEFENDANT RAILROADS AND RAILROAD PRESIDENTS TO STRIKE PLAINTIFF'S LIST OF DOCUMENTS AND IN THE ALTERNATIVE FOR PRE-TRIAL RULINGS.

(Filed January 30, 1959)

Defendant railroads and railroad presidents move to strike the list of documents filed by plaintiff, on the ground that said list is not in compliance with the Court's order of August 1, 1958, requiring plaintiff to furnish defendants with a list of documents which it intends to offer at the trial, in that said list includes a great mass of immaterial and inadmissible documents which could not conceivably be received in evidence.

In the alternative said defendants move that the Court, in its pre-trial order entered after the pre-trial conference, make the following rulings:

1. Evidence of cases pending before the Interstate Commerce Commission, decisions of and hearings before the Commision in particular cases, internal functioning
654 of the Commission or a Division thereof, organizational minutes of the Commission, and the code of ethics for practitioners before the Commission, including Items 83-94 of Plaintiff's List of Documents submitted in response to Order of August 1, 1958, is irrelevant and immaterial and will not be admitted in evidence at the trial.

2. Evidence that the Permanent Subcommittee on Investigations of the Committee on Government Operations of the United States Senate conducted an investigation of

the conduct of defendant Cross as an Interstate Commerce Commissioner or that the Subcommittee rendered a report to the Senate on the subject, or of the contents of that report is irrelevant and immaterial and will not be admitted in evidence at the trial. Plaintiff will not be permitted to advise the jury in any manner that such an investigation was conducted or such a report rendered. The text of Item 19 (the transcript of hearing before Senate Subcommittee) may be used or offered in the same manner as any other extrajudicial statement, but it may not be used or offered in such a manner as to disclose to the jury that the hearing was held before the Senate Subcommittee. Items 19 and 20 (the printed transcript of hearings and the printed report of the Senate Subcommittee) will not be admitted in evidence at the trial.

3. Evidence of the sale of the residence occupied 655 by defendant Cross and his wife in Maryland and the purchase of the residence in Deerfield, Illinois which the Crosses subsequently occupied, including Items 1, 22-29, 31-33 (except LaSalle Exhibits 10-11B) on Plaintiff's List of Documents, is collateral to the issues made by the pleadings and immaterial and will not be admitted at the trial.

4. Evidence of the sale of the Deerfield residence to Morton Klein and Florence B. Klein, including Item 30 and LaSalle Exhibits 10-11B in Item 13 on Plaintiff's List of Documents, is collateral to the issues made by the pleadings and immaterial and will not be admitted as the trial.

5. Evidence of the sale by Carrollton Farm Supply Company of certain trucks to Lasham Cartage Company and quotations received by the latter company from International Harvester Company on certain trucks, including Items 50-56 on Plaintiff's List of Documents, is irrelevant and immaterial and will not be admitted at the trial.

6. Evidence concerning the negotiation of the formal contract with defendant Keeshin or defendant Railroad Transfer Service, Inc. after the award of the contract on June 13, 1955 is immaterial and will not be admitted at the trial.

7. Evidence, including routine correspondence and memoranda, relating to the details of the change-over
656 of the transfer service from plaintiff to Railroad Transfer Service, Inc. after the award of the contract on June 13, 1955 is immaterial and will not be admitted at the trial.

8. Evidence concerning the operation of the Chicago transfer service by Railroad Transfer Service, Inc. after October 1, 1955 is irrelevant and immaterial and will not be admitted at the trial.

9. Evidence relating to the proposed terminal transfer charge to be passed on to passengers, which the railroads have considered from time to time before and after the change-over from plaintiff to Railroad Transfer Service, Inc. and which has never been adopted, is irrelevant and immaterial and will not be admitted at the trial.

10. Evidence concerning attendance by individual defendants or by officers or employees of defendant railroads at meetings or conferences which have not been identified with or shown to be related to the subject matter of this action is irrelevant and immaterial and will not be admitted at the trial.

11. Records of telephone calls will be admitted in evidence only if there is evidence identifying the calls to which the records refer with the subject matter of this case.

12. Plaintiff may make an offer of proof of any of the foregoing evidence in writing. The offer may be
657 filed before trial or at any time before plaintiff rests

its case. No offer of proof may be made in the presence of the jury.

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By PWJ
Charles J. Hopkins, Jr.,
By PWJ
Attorneys for New York Central Railroad Company
Floyd E. Thompson,
By PWJ
Philip W. Tone
Attorneys for other Defendant Railroads and Presidents

Of Counsel
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135 South LaSalle Street
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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ADOPTION AND JOINDER BY JOHN L. KEESHIN AND RAILROAD TRANSFER SERVICE, INC., DEFENDANTS HEREIN, IN MOTION OF DEFENDANT RAILROADS AND RAILROAD PRESIDENTS, TO STRIKE PLAINTIFF'S LIST OF DOCUMENTS AND IN THE ALTERNATIVE FOR PRE-TRIAL RULINGS.

(Filed February 11, 1959)

Now comes John L. Keeshin and Railroad Transfer Service, Inc., defendants in the above cause, and do hereby move the Court as follows:

1. Defendant railroads and railroad presidents on January 29, 1959, did file a motion with the Clerk of the above Court to strike plaintiff's list of documents, and in the alternative for pre-trial rulings, and a Brief in support of said motion.

2. These defendants do hereby join in and adopt said motion in their behalf, to strike plaintiff's list of documents and in the alternative for pre-trial rulings, and do hereby join in and adopt said defendant's Brief 659 in support of said motion.

Albert J. Meserow
Albert J. Meserow
Attorney for John L. Keeshin and Railroad Transfer Service, Inc., Defendants

Albert J. Meserow
231 South La Salle Street
Chicago 4, Illinois
State 2-8500

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ADOPTION AND JOINDER BY HUGH W. CROSS, DEFENDANT, IN MOTION AND BRIEF ON BEHALF OF DEFENDANT RAILROADS AND RAILROAD PRESIDENTS, TO STRIKE PLAINTIFF'S LIST OF DOCUMENTS AND IN THE ALTERNATIVE FOR PRE-TRIAL RULINGS.

(Filed March 4, 1959)

There have been filed herein a motion and brief in support thereof of Defendant Railroads and Railroad Presidents to strike plaintiff's list of documents, or, in the alternative, for certain pre-trial rulings. This defendant,

Hugh W. Cross, adopts said motion and brief, and in addition to the grounds stated in said motion, claims that any decisions of and hearings before the Interstate Commerce Commission, of which this defendant was a member, or of any other matters connected with the said Commission were and are privileged.

The plaintiff has included in its list of documents to be offered in evidence at trial, documents pertaining to 661 cases pending before said Commission, including decisions of and hearings before the Commission in particular cases, documents relating to the internal functioning of the Commission or a division thereof, and organizational minutes of said Commission while Defendant, Cross, was a member thereof. Plaintiff's purpose in offering this evidence will be to attempt to create an inference that Cross improperly decided certain particular cases selected by plaintiff in favor of the defendant railroads in consideration for their awarding the Chicago transfer contract to Keeshin.

Cross was appointed a member of the Interstate Commerce Commission in 1949 and did not become Chairman of the Commission until July 1, 1955, after the Chicago transfer contract had been awarded to Keeshin. The Commission has and had eleven members and Cross, before being chairman, was a member of one of the divisions.

After the many years Cross had spent in public service without any accusations of improper conduct and without any shadow on his record, the charge has now been made that he, for a valuable consideration, influenced the Defendant Railroads to award the Chicago transfer contract to Keeshin. There is no allegation of what the consideration was supposed to be, but the plaintiff asks the court 662 and jury to assume from a decision or decisions in favor of the Railroads that there must have been a consideration.

It would be to the best interests of Cross to publicly clear his name of these charges and the best possible way would be to have a full hearing at trial, not only on the documents but on all matters in which he participated while a member of the Interstate Commerce Commission. However, this procedure would be very costly, time consuming and would confuse the real issues.

If plaintiff company is allowed to proceed on its theory that if there were a decision in favor of the defendant railroads, or any one or more of them, by the Interstate Commerce Commission, such would show there must have been a valuable consideration. This would be new and would subject all tribunals to the necessity of defending their decisions in all cases. We all know that some minds believe that if a case is lost the tribunal was paid off, yet, to say the least, such is not an established doctrine. And here, the defendant, Cross, was only one member of eleven of the Commission. Such conclusion is based upon a virtual impossibility.

Therefore, this defendant, Hugh W. Cross, claims that the documents listed in plaintiff's list and other matters connected with the Interstate Commerce Commission 663 are immaterial and irrelevant and are also privileged and should not be admitted in evidence at trial. The Court should rule on their admissibility at this time.

Charles F. Hough
Charles F. Hough
William F. Coale, Jr.
William F. Coale, Jr.
Louis A. Witry
Louis A. Witry
Attorneys for Hugh W. Cross

1 IN THE UNITED STATES DISTRICT COURT

* * (Caption No. 56 C 323) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause at a pre-trial conference in the chambers of the Hon. Edwin A. Robson, one of the Judges of said Court, in the United States Court House, Chicago, Illinois, on Monday, May 11th, 1959, commencing at 10:15 o'clock a.m.

Present:

Mr. Leo A. Freeman, (Suite 514, 105 South La Salle Street, Chicago 3, Illinois),

Mr. Thomas C. McConnell, and
Mr. Francis J. McConnell, (Suite 1110, 134 South La Salle Street, Chicago 3, Illinois),

Mr. John Paul Stevens, (Suite 820, 105 South La Salle Street, Chicago 3, Illinois), and

Mr. Herbert B. Lazarus, (1501 Broadway, New York 36, New York),
appeared for Plaintiff:

2 Messrs. Thompson, Raymond, Mayer, Jenner & Bloomstein, (Suite 3300, 135 South La Salle Street, Chicago 3, Illinois, by
Mr. Floyd E. Thompson and
Mr. Philip W. Tone,
appeared for defendant railroads and railroad presidents:

Mr. Albert J. Meserow, (Suite 1353, 231 South La Salle Street, Chicago 4, Illinois),
appeared for defendants John L. Keeshin and Railroad Transfer Service, Inc., and
Mr. Charles F. Hough and

Mr. Louis A. Witry, (Suite 2600, 135 South La Salle Street, Chicago 3, Illinois),
appeared for defendant Hugh W. Cross.

(The Court gave attention to other matters on the call, after which the following proceedings were had herein, to-wit:)

The Clerk: 56 C 232, Parmelee Transportation Company against John L. Keeshin, et als, for pretrial conference.

The Court: Are the parties ready to proceed?

Mr. Thompson: I do not see Plaintiff's attorneys here.

Mr. Thomas McConnell: We are here, your Honor. Mr. Freeman is coming in now.

Mr. Freeman: Good morning your Honor.

The Court: Good morning. I thought that before we proceeded into the pre-trial there is a statement I should make. I spent the week-end going over the record in this case.

I notice that there has been a lot of innuendo and a lot of talk, and so that there can be no question about the attitude of the Court or any connection with this case I thought it should be stated plainly for the record so that you gentlemen could take any matter that I might state into consideration.

As far as the Defendant Hugh Cross in this case is concerned, I first met him probably in 1935 when he was down in the Legislature. I knew him as Speaker of the House. I became quite friendly with him.

I knew him as Lieutenant Governor. I helped handle parts of his campaign the same as any Republican Party member would do in causes of this kind.

When I left the practice of the law and my work in connection with the County Board—I might say that I

met his as Attorney for the County Board handling their legislative maters. I knew his wife, I knew his son, and I had dinner with him from time to time. I had never been in his home and he had never been in my home.

After I went on the bench I probably saw him twice and that was within the first two years that I was on the bench. As far as I can recall I have not seen him since the year 1947.

There is some mention, I find in the record, about the United States Senator and about Mr. Rainville, his Administrative Assistant. I want to state that I have known both of those gentlemen for a long time. I want all of you to be aware of this fact, particularly in view of the fact that there is litterness in this case and there have been some problems which have come up during the course of it.

It might go to my qualifications and I have been in this game too long to have statements — I can't prevent them, but any that I can prevent I want you gentlemen to be aware of and if this raises any question either in any of the Plaintiffs' minds or any of the Defendants' minds as to my competency or my fairness in handling this case, because I call them as I see them, I feel that it is necessary that you gentlemen, if you are not aware of it, should be made aware of this factor so far as the case is concerned.

Now, if you want to consider that as to whether or not you feel this Court should disqualify itself, I want that understood at the outset before we go into it so that no question in the future can come up on it.

Mr. Thomas C. McConnell: Speaking for the Plaintiff, we don't have to consider it. We have no question at all about it.

Mr. Thompson: Speaking for the Defendants, we certainly do not have, because if there is any Judge

on the bench here that does not know some of these people, then he must have been living in a vacuum somehow.

The Court: Well, I wanted the whole thing made clear here so that no question could possibly come up in the future on it.

Mr. Thomas C. McConnell: There will not be any question from us.

Mr. Freeman: None whatever.

The Court: This is a case in which, apparently, some bitterness and some animosity may arise during the course of it. However, you are all able lawyers, and I expect you will conduct the matter in the same way that every lawsuit is conducted, but I felt it incumbent after going over this record that I make this statement.

Mr. Hough: May I make this statement, Judge Robson.

The Court: Yes.

Mr. Hough: I represent Hugh Cross. You have made this statement, and I have known you for a long time, and I would just like to think it over for a few minutes as to whether I wouldn't be convinced that your Honor is such a type that having been on the team, if you want to put it that way, that you might lean over backward against me.

The Court: Well, what I have stated are the facts, and I thought you gentlemen should be aware of it.

Mr. Hough: That is what is bothering me right now.

The Court: You know of some of my connections with Hugh Cross in the past.

Mr. Hough: I know.

The Court: As I say, I haven't seen him for over ten, maybe it is twelve years. I felt all of you should be aware of that factor, because I feel you are entitled to know that.

Mr. Hough: I am a little worried because of your

extreme honesty, and I would like to think it over a few minutes.

The Court: All right. We will recess for a short time and you gentlemen can discuss it, but I wanted that clear for the record so that you would all know about it.

Mr. Thompson: Two minutes you say you want?

Mr. Hough: No. I am very serious.

The Court: All right. We will recess for fifteen minutes.

(Whereupon a fifteen minute recess was taken, after which the following further proceedings were had herein, in chambers, to-wit:)

The Court: Mr. Hough, do you have a statement you want to make?

Mr. Hough: When your Honor made that statement, obviously I have quite a responsibility to Hugh Cross and I simply wanted to give it some consideration. After consideration, the Defendant Cross is ready to proceed.

The Court: I wanted you to be sure, as I did all parties. You probably know the background, during the time he was in active politics, of my relations with Hugh Cross better than anybody else, and I wanted you as well as the other parties to feel satisfied in your own mind -- I do not want the question to come up later on -- that you feel in good conscience with the facts I have put before all of you, that you want me to proceed with the case.

Mr. Hough: I am ready to proceed.

The Court: Is that true of all of you gentlemen?

As I said, I wanted it before everybody so in good conscience you could recommend to your clients that I should proceed with the case. I wanted that clearly understood.

Is there any question in anybody's mind on it? If so, I want you to state it freely.

Mr. Thomas C. McConnell: I did not have any question in my mind about it. I consulted with the other counsel in the case and they didn't either, so there isn't the slightest question on this side of the table about your Honor's fitness, or having you proceed with this case, not only now but you will never hear anything from this side of the table at any future time.

Mr. Thompson: The same is true for this side of the table.

The Court: Well, then we can proceed to discuss the matter of proceeding here today. Now, I do not know whether it would be more convenient with the lectern in the court room. I prefer the informal type of discussion, but with a lectern with each side having an opportunity to make their statements, if it would be easier to proceed out in the court room we can do that.

What do you feel would be the best for the parties here? Would you rather do it with the lectern? I would rather give each one their opportunity in turn. Because this motion was made by the Defendants they would have the right to make an opening. I do not know whether one is going to speak for all or each one wants to have his opportunity.

As I see this, first we come into the broad area on the limitation of proof, that is, the broad discussion, and then after considering that area we come down to the specifics as alleged by each of the parties, and then after that is considered we come into the documentary proof as offered by the respective parties and as to what should be done within those areas.

For the convenience of you gentlemen we can work out the ground rules either of proceeding in the court room with each one having an opportunity to discuss it or we can proceed in a more informal manner here, and I leave it up to you to decide on that.

Mr. Thompson: Well, speaking for the movants in this case, the arrangement which seems to me would
11 be best for the Court and perhaps all concerned, as I view it, would be to have each segment of these motions considered separately and concluded.

In other words, on the question, as you say, of the propriety of a ruling at this stage, you can hear each side on that question, and on the question of the ICC documents, you can hear each side on that question.

That being true, it seems to me that the informal proceeding in chambers would be much more convenient; otherwise I would have to be coming up to the lectern and then I would have to retire about twenty times, and it seems to me that is altogether unnecessary. As I view it, I think the informal procedure with your Honor calling the strikes would be best.

The Court: Which way would you prefer?

Mr. Thomas C. McConnell: I do not care. It does not make any difference.

The Court: Is the informal proceeding satisfactory?

Mr. Thomas C. McConnell: Yes.

Mr. Freeman: Yes.

The Court: Well, then, we can proceed in that
12 way. We will start in just a minute, gentlemen.

(There was a short interruption, after which the following further proceedings were had herein, to-wit:)

The Court: All right, gentlemen. You may proceed.

Mr. Meserow: If your Honor please, I would like to make just one observation.

The Court: All right.

Mr. Meserow: I represent Mr. John L. Keeshin and Railroad Transfer Service, Defendants in this case.

In the interest of time, because the issues as to all of

the Defendants are pretty much the same, in the interest of saving time I think Judge Thompson can adequately present the issues and our position in this matter.

The Court: Are you speaking on behalf of all them, Mr. Thompson?

Mr. Thompson: Well—

The Court: Or do you wish to be heard separately, Mr. Hough?

Mr. Hough: No. I do not want to be heard sep-
13 arately. As a matter of fact, I may not remain here. I am represented by Mr. Witry over here (indicating Mr. Witry).

The only time that I might want to comment would be very brief, if it arises, as to the attack upon Hugh Cross personally. I might want to comment on that, but other than that, no.

Mr. Thompson: I do not see how that question can possibly arise in this pre-trial conference. We are considering here questions of law, not fact.

Mr. Hough: That is right.

The Court: All right. I think with that understanding and with the memorandum we have before us we can first go into the broader area of the question of limitation of issues as it is presented more or less in order in your motion, in the original motion, in your reply and then the Plaintiff's reply to your original motion. You may proceed.

Mr. Thompson: If the Court please, the matter of the order of August 1, 1958, seems to me needs no discussion. The order speaks for itself, and the purpose of the order, it seems to me, was obvious when entered and is still obvious.

14 Now, the first question, I assume, from what your Honor has said is the question of the propriety of consideration of these specific limitations that we have presented by our motion and our supporting briefs.

The question of ruling on the admissibility of a particular item of evidence, or in this case groups of documents which cover a particular item of evidence, is one that presents itself only when there are no issues of fact so that the Court is in as good a position to rule at a pretrial conference as he is at the trial.

In other words, if the facts are not in dispute and the issue is clear as to whether or not that particular item of evidence should be received, then I should think that it is not only proper but very desirable that the ruling be made before trial.

If it is something that is not to be received under any circumstances then, of course, it ought not to be offered in open Court, there should not be any mention made of the subject in the opening statement, there should not be any offer of evidence in the presence of the jury, and all in all the matter should be eliminated not only in the interest of orderly procedure at the trial, but also in the interest of preparation for trial.

Now, we think the question is rather clear here that the different groups of documents which in effect represent a particular segment of evidence, are respecting issues which are not in dispute.

In other words, take the Interstate Commerce Commission proceedings; there is no dispute that they had such proceedings, there is no dispute that decisions were made and there is no dispute that Cross was on the Commission, and so on through the whole series of documents and evidence relating to Interstate Commerce matters.

That question is as clear to the Court today as it could possibly be during the course of the trial. Either these proceedings are to be inquired into or not on the question of whether they are relevant, in the first place, to the issues made by the pleadings; and in the second place

whether, if relevant, they have probative value and also whether the cost of receiving any such evidence, the penalties of diverting attention of the jury from the
16 real issues in the case and all those things, the implications arising from it, outweigh whatever value they may have. I use that only as an illustration.

The same thing is true with some of the other groups as we will speak of them, as we come to the other groups.

Now, to say that these things cannot with propriety be ruled upon before trial it seems to me to be destroying the very purpose of a pretrial conference. The purpose of it is to limit the testimony to the matters that are appropriate subjects of inquiry, and to advise the respective parties of the issues that will be tried.

They have been limited many times in many jurisdictions where the Court has dictated the issues that would be tried, and in this case that is exactly what we are asking for, for the Court to set up by pretrial rulings the limitations on the character of evidence that will be received.

Now, they say that first we have to know what the issues are. Counsel says that this complaint charges a conspiracy to restrict freedom of bidding and to
17 create a monopoly of bidding in Keeshin. Now, of course, a charge of a conspiracy does not prove it. They have to prove it before they can produce any evidence of what would otherwise be hearsay, and the relevancy of the evidence to that issue, it seems to me, is rather narrow.

There is no other issue. There can be no issue that because this was an exclusive contract it is a violation of the anti-trust laws. The Supreme Court has decided more than once that that is not a basis for allegation of violation of the anti-trust law.

It is also equally well settled that the fact that all of

the railroads acted together in making a contract essentially one that would have to be made in such fashion does not in itself make it an unlawful transaction.

Therefore, the issue is limited to the question of whether or not these folks conspired to fix restrictions or restraints that are unlawful in the matter of receiving and considering bids that were made for this service.

Both contending parties, as it ultimately turned out — there were invitations, as your Honor knows, to many
18 people, and I assume many of them considered the matter more or less, but it wound up with two competitors. Each was competing for exactly the same thing, namely, a five-year contract for rendering this service at a stated cost and under stated service conditions, so there is no question about the fact that each was asking for an exclusive contract and there was no question but what each was asking the railroads to act in concert in granting the contract.

Now, that being true, the issues being thus limited, and it seems to me very limited in this case if the case is held within the proper limits, the issue is rather narrow; and that being true, we have to find evidence that is relevant to prove that these people did conspire and you can't prove it backwards. You cannot make hearsay evidence competent by using hearsay evidence to establish the premise for its competency.

Now, that, I think, is all that is necessary to be said on the over-all subject. I think we come to the question of —

The Court: Let me ask you a question.

Mr. Thompson: (Continuing) — these specific things, and I can be more specific about it.

19 The Court: Let me ask you a question within that area, and your briefs do not touch on it to any great extent, neither side's briefs, although the Defendants

have mentioned it: What about within the areas of rebuttal?

The Plaintiff puts on his case, and then there is certain evidence that comes in and they feel it is necessary to use it in rebuttal to what you have introduced. If I were to prescribe limitations and then it becomes apparent on the basis of the allegations of the complaint, the answers that are filed and the interrogatories, that certain areas of this are necessary for rebuttal, and if I would limit at this time the issues that might be affected by your case, when the defense is put on, what would be the attitude and what would be the effect of restricting?

Now, I am considering the elements here of the railroads and the conversation, as an example, the statement that Johnston had heard that Cross was going to be put on in an executive position, and certain areas come out in the Defendants' case either on cross examination or on direct examination, or the areas here that we find as to the decisions of the Interstate Commerce Commission or the relationship of Keeshin and Cross.

That is one factor that has gone through my mind in going through the memoranda and in going through the exhibits, that there might be an area where there is a necessity as a result of the Defendants' case.

Mr. Thompson: Well, it seems to me that the answer to that is this: Your Honor rules now that a certain area of evidence is irrelevant and does not support any of the issues made by the pleadings, which is where we are at this stage.

The Court: That is correct.

Mr. Thompson: Then if at the close of the Plaintiff's case the Plaintiff has made such a case that the Defendants need to put on any defense then, of course, the defense will be made.

Now, the ruling we are asking for is that these things

shall not be in the first instance received on behalf of the Plaintiff as relevant evidence and that, of course, I assume as the Plaintiff's case develops might present a situation where a change would have to be made in the ruling, and we provide that they may make offers
21 of proof but they must be made in writing either before the trial or at the trial so that they are not made in the presence of the jury, and if the Court then finds that that offer of proof by virtue of something that has happened on the trial opens up an area which in the first instance has been held to be irrelevant or outside of the scope of the pleadings, of course, the Court always has the matter in his control.

The fact that the Court makes a ruling now or makes it the first day of the trial does not affect the Court's power to change that ruling the second day of the trial.

The Court: No. The thing I am thinking of is the area of discovery which is necessary. The Rules of the Federal Court are very liberal within that area.

I believe we should restrict every case as much as possible and get down to what the issues are, but one factor is within the area of discovery preparing their case, and if I limit it to an extent and then it does come in as a part of your case with the amount of evidence apparently that will go on, there is a question of whether I will
22 prevent the Plaintiffs, assuming that there is no ruling in your favor at the close of the Plaintiff's case, whether I would have unduly restricted them within these areas and that is one factor that the briefs, while they touch on it, do not consider and I think it is a factor in an effort to limit the issues, and that we must also consider that phase of Plaintiff's case.

Do you understand what I mean by that?

Mr. Thompson: Yes, but there is no question here of limitation of discovery.

The Court: No.

Mr. Thompson: They have been all over the lot on that.

The Court: Well, with respect to that, I do not know how far they have gone.

Mr. Thompson: Well, it is —

The Court: I have enough before me. There are 4500 pages of discovery.

Mr. Thompson: As far as I know discovery is completed, unless the Court —

The Court: I was told by you that you need another two years of discovery unless it was limited here. Is that correct?

23 Mr. Thompson: I was just about to say —

Mr. Thomas C. McConnell: That is a very conservative statement.

The Court: Well, go ahead. I just wanted to interject that. Go ahead.

Mr. Thompson: I was about to answer your Honor, until I was interrupted.

The Court: Go ahead.

Mr. Thompson: I was about to say, if the Court holds at this stage, and certainly this is the stage to make the ruling, that we are going to try all the cases that were tried before the Interstate Commerce Commission during the year 1955, then I don't know how long discovery will have to be.

Now, of course, it seems to me it is as clear as any question could appear that these Interstate Commerce proceedings and all the matters relating to the Interstate Commerce actions are irrelevant to any issue. They prove nothing as to whether or not a conspiracy existed or whether or not there were acts done in furtherance of the conspiracy.

Now, their suggestion is that they be allowed to 24 show that there were thousands of cases pending

before the Interstate Commerce Commission, that millions upon millions of dollars were involved and the very economic life of the railroads rested in the control of the Commission, and having proven that that then the Court shall rule it will be irrelevant and the Court will not listen to evidence as to whether Cross decided correctly or incorrectly in these cases.

Now, if the decision, or the proceeding, even, is presented, obviously the jury can draw no other conclusion except that it does have some relevancy to the issues in this case, and the jury will then necessarily jump to the conclusion that Cross's conduct was venal in all these matters as a member of the Commission unless we prove that it was not.

Now, if we are allowed to prove that every decision he made was a correct decision, then, of course, there could not be anything wrong with his conduct, but how are you ever going to prove that to a jury?

You can't even prove it to a Court a lot of times, as to whether the Commission's decision is right or wrong. After all, it involves things no jury could possibly pass on.

Now, on the other hand, if they can present to the jury the fact that the B. & O. Railroad had pending before the Commission the ex parte matter of approving the issuance of new securities in this tremendous refinancing program, one of the largest, so they say in their brief, and I accept that, of any financing ever done by any railroad, what position will we be in?

In other words, the B. & O. in a favorable market was issuing new bonds to replace old bonds. Now, it was purely ex parte. It did involve millions of dollars. If the jury were told that the case was pending and that there were contacts and conferences between the members of the Commission and the financial officers and executives

of the B. & O. in the course of dealing with that purely ex parte matter — nobody had any interest in it except the public, outside of the railroad, and the sole purpose, I assume, of giving the Interstate Commerce Commission jurisdiction in such matters to approve securities is to be sure there is no monkey business which affects the public interest or which jeopardizes the financial
26 situation of the railroad or which involves some juggling of securities for the private benefit of somebody to the injury of the railroad and the public.

Now, it is purely ex parte. It is perfectly obvious to all lawyers that know anything about it that those things are carried on back and forth by information being exchanged in bringing about the formal set-up of this refinancing, but the jury does not know it and all of the denials and all of the explanations to the jury would never remove from their minds that there was an opportunity involving millions upon millions of dollars for corruption and therefore, the Court having received it, corruption must have existed or the Court never would have allowed it to come in.

That is just an example of what these things may be. They have listed here a half a dozen matters in one of their answers to interrogatories. I do not even know what some of them are by their description, but I am sure all of them involve vast sums of money. They were of economic interest to the railroads. There were
27 some of them in which the interest of one railroad was different from the interest of another.

If you are ever going to open up this question of receiving any evidence of any action by the Interstate Commerce Commission, it seems to me that we have thrown the thing wide open to any proceeding. What the end would be I don't know. I am sure the jury could not ever get the thing untangled and the Defendants

wouldn't know where to stop in proving that there was no corruption, that there was no corrupt decision in their favor.

I do not know how else you would meet the innuendo that comes from the very fact the evidence was presented. Now, the Court is in just as good a position to rule on that today after these questions that are in the Court's mind are resolved, as it will be on the trial. There is not going to be any change in the facts. The facts are all admitted.

There isn't any question but what these proceedings were pending. There isn't any question but what Cross was a Commissioner. There isn't any question about these other issues, as to whether or not there were con-
28 versations between the B. & O. people and the Commissioners and the officers of the Commission and Cross himself. Now, is that admissible?

There is no question but what all these other matters were pending before the Commission. Now, what the decision was, just to admit the decision in evidence, what does it prove? It proves absolutely nothing unless the decision was an evil decision and obviously wrong, and of course, Cross could not decide it by himself.

I think that the Interstate Commerce Commission, so as not to confuse some of these other things we are going to talk about, points up perhaps more clearly than any of the other categories the necessity for a pre-trial ruling and the obvious propriety of the pre-trial ruling.

I don't see how anything, certainly the proceedings of the Commission, the formal proceedings, the minutes of the proceedings of the Commission, the rules of conduct of the Commission and all of those things, can have any probative value as to whether this conspiracy existed.
29 Whatever the facts, it could not prove anything one way or the other. It just has no bearing on this

limited conspiracy. It is a very limited one according to their own allegations.

Now, it is not going to prove or tend to prove that this bargain was made that they allege in their complaint, that is, the proceedings before the Commission are not going to prove that or tend to prove it. It is not going to prove or tend to prove that these railroads participated and did acts in furtherance of the alleged conspiracy.

I cannot see how the Court is going to be in any better position to rule at any other stage than it is today on that question, and that is my point.

Mr. Hough: May I be excused?

The Court: Yes.

Mr. Hough: Before I go, I just want to make one statement. Assume they get all this in — and I am very much concerned about it representing Cross from a time and money standpoint, as is obvious — why don't we have to bring in all other ten Commissioners that acted there to see whether he attempted to influence them, whether the decision was correct, whether they were free from influence, and what not?

It goes out into ramifications that are indefinite. That is just what we will have to do.

The Court: Does anybody else for the Defendants desire to make a statement within the area Judge Thompson has covered?

(No response.)

The Court: Who is going to speak for the Plaintiff? Are you going to speak on behalf of the Plaintiff?

Mr. Thomas C. McConnell: Well, I will speak generally, with respect to the general area.

The Court: Yes. That is what I am talking about.

Mr. Thomas C. McConnell: Mr. Freeman is better qualified than I am to speak on these specific items of evidence.

Of course, the purpose of these motions, as Judge Thompson discussed, is to try to limit the evidence.
31 I concede that is the purpose. How far that should be done in a conspiracy case or whether it should be done at all in this particular case is really the issue before us, and when the question is posed to Plaintiff's counsel it brings up the question of the whole preparation for the trial of this case.

I do not think any lawyer is in a position this far in advance of the trial to tell exactly in what way and in what manner he is going to use individual items of evidence in proof of a conspiracy.

Now, Judge Thompson very characteristically oversimplifies all these problems. The question of proof of a conspiracy is not, as he stated, proving a conspiracy with a statement, or with one witness or one document or with any combination of witnesses or documents testifying to the direct question whether there is or is not a conspiracy in this case. I do not think I need to elaborate the contention before your Honor that conspiracies often are and many times can only be proven by inferences drawn from facts and evidence which is before the jury, and ordinarily, at least in every jury case I have
32 tried in this field, the question before the jury is, from all of the inferences which are drawn from all of the facts which are presented is there or is there not a conspiracy in this case?

I have never yet heard in my experience, and while it is not as vast as that of Judge Thompson, still it does carry some measure of experience in the field — I have never been limited in the manner which the Judge suggests here, that is, the Judge across the table.

The Court: Well —

Mr. Thomas C. McConnell: We — pardon me.

The Court: Just so we direct you along the line, in

going through this there could be a vast volume of discovery and the time and money of all the parties could be spent and then we would come to the trial and I might rule that it is not admissible.

I think we have an area there where there should be a limitation on the issues, particularly when I examine, which I have done — I have not gone into every area in all the files that there are on it to date here, but there certainly have been plenty of motions, and with
33 a conspiracy such as is charged here and with the proof that might or could be considered by you admissible, it does present a serious problem.

As an example, there have been raised the cases before the Interstate Commerce Commission. In your brief and statement you told me that all you wanted to do was to show that these matters had been pending before the Commission, but once that inference is in there then the Defendants have the burden of overcoming that inference and if they submit substantial proof within that area then on rebuttal you have the right to come back with further proof.

Now, that is what I am attempting to see within all of these areas, what can or might be done. I realize that a conspiracy is something in which you cannot say, "This was done and that was done", but here we are dealing with the scope of what could or might have to be prepared, and that is what discovery is for in connection with the trial, and the expenses that all of the parties may go to, including the Plaintiff, to prepare it and then at the trial I would say, "I am ruling that this is not
34 admissible", after you have spent thousands of dollars, say, in preparing for that.

I just pose that in connection with your statement that you did not know what area or how far or to what extent it might go.

From the discovery to date, which I assume from what I have read has covered approximately two years, don't you have in mind the areas that should be covered by this and how far it should go?

Mr. Thomas C. McConnell: Yes, I do. I have the areas in mind, but my difficulty is in believing that we are trying to get within the legitimate scope of conspiracy proof, or whether I am faced with a maneuver here to so limit my handling of this lawsuit that I cannot adequately present the Plaintiff's case. Now, that, it seems to me, is the question I have before me.

I want to state this before we discuss the minutea of the evidence: Judge Thompson made a statement here which — I don't know where he gets it, but certainly I want to refute it at the earliest possible moment. He said that we are all in agreement on this contract, that it is a perfectly lawful, legitimate contract.

35 We are not at all. I feel that the contract that was made here is one of the most flagrant violations of the anti-trust law that I have ever seen in any lawsuit. Certainly one of the major issues in this case is whether or not that, standing aside from everything else, whether that contract in and of itself is not a sufficient violation of the anti-trust laws to justify recovery by the Plaintiff here, leaving the only question in the case the question of damages.

Further, he is asking for evidence, prior to the admissibility of any other evidence of conspiracy, of whether there was any conspiracy, and I have never seen more cogent evidence of a conspiracy, leaving the contract aside as a contract. Forget it as a contract. What more conclusive evidence of a conspiracy, as a foundation at least for proof, could a litigant ever present than a contract which he concedes exists — there is no question about its existence — in which all the defending parties sat down

at one time, at one place, and affixed their signatures to what is not only a contract, but after all, the defini-
36 tion of the conspiracy law as I have always heard it would qualify it also as a conspiracy to suppress competition in this very important segment of Interstate Commerce.

With respect to that angle of the case we come into a violent conflict as to what we are going to prove and what the nature of this conspiracy is, at the very outset of the case. Now, that your Honor can pass on in advance as to whether or not that contract does violate the anti-trust laws and as to whether or not that is sufficient foundation for other conspiracy proof, which he says is all hearsay, not admissible in evidence at all because it is hearsay, but concedes in his brief all the way through each item, that it is competent, admissible evidence, once you show that there is a conspiracy.

Now, I do not agree with his statement of the law on that. There is no condition precedent. It is a matter of the sound judicial discretion of the Court as to the order of proof and whether or not, when all the inferences are drawn from all the evidence that has been presented, the jury is justified in concluding that a conspiracy exists.

37 If it does, then the Court usually instructs the jury — I am not setting myself up as to how the case should be tried, but I am just drawing on my own experience as to how they have been tried in the past. The Courts have waited until that point has been reached and then told the jury by instruction or withdrawing the evidence whether or not a prima facie case has been made out for the admissibility of evidence which otherwise would be hearsay.

Now, what Judge Thompson is saying is that we can divide this case up in little segments, we can cut it up in

little bits, we can take this part of the evidence and that part of the evidence and view it alone in advance of trial, and then he is going to argue why, of course, it doesn't mean anything, we get into this business before the Interstate Commerce Commission, and so forth, and we have to try all these lawsuits—we are not going to try all those lawsuits—but that is a different thing from saying you are going to limit all evidence and proof that might be admissible on that in advance of trial.

Now, as I see that issue all there is in it is this, that
38 Cross had tremendous influence with the railroads. He had to. Why? Because he was Chairman of the Interstate Commerce Commission dealing with matters in which they were present before him and—

The Court: Didn't he become Chairman—

Mr. Thompson: After this was all over.

The Court: (Continuing)—after the contract and all was entered into?

Mr. Thomas McConnell: Well—

The Court: He was not Chairman at the time, was he? Is that correct?

Mr. Freeman: He was Chairman commencing July 1st.

The Court: Yes.

Mr. Freeman: He was slated to be Chairman though.

Mr. Thomas McConnell: But he was on the Commission, at any rate.

The Court: Yes, but you said he was Chairman and I wondered if there was a disagreement on that.

Mr. Thompson: No.

Mr. Freeman: No.

Mr. Thomas McConnell: The point about Cross is a very simple one, that he was in a position to use his
39 influence with the railroads and that through the interposition of Keeshin he did use his influence with the railroads and this influence existed by virtue of his posi-

tion, not by virtue of how he decided a particular case which was pending before him, but he was in a position to use his influence on the Commission, and one man on that Commission can influence what is being done by others either in discussion, by advocacy, by talks informally or on the record, and it is perfectly obvious what the conflict was.

The Senate saw it and apparently Cross saw it because he was quite apologetic, as you see in his deposition and in the record.

Now, why we should have to go into the minutae of that evidence when your Honor controls that at the trial, I do not see. This is very interesting to me, because the last time I argued this issue—

The Court: What are you discussing, now? You have mentioned two things. You say, the minutae of that evidence. You mean before the Senate Committee, or his deposition?

Mr. Thomas McConnell: Well, I was addressing myself to Judge Thompson's contention here—

The Court: Yes.

Mr. Thomas McConnell: (Continuing) —that we had all these lawsuits to try—

The Court: I see.

Mr. Thomas McConnell: —before the Commission.

The Court: All right.

Mr. Thomas McConnell: I said at the beginning that we did not have any intention at all of trying all those lawsuits before the Commission. We say that in our briefs. What our position is here, rather than going through having this case departmentalized and cut up into little segments at this stage of the proceedings, it seems to me that in ruling on evidence the Court is in far better position to rule on it at the trial when he sees how the case develops, when he sees the background, when

he sees whether or not there is the foundation proof for conspiracy and whether or not things which we are offering from time to time tend to prove what we have alleged in our complaint.

41 Now, we not any more interested than Judge Thompson is in getting this case out into left field. We want to be perfectly logical, we want to be concise, we want to get the case presented in the shortest possible time, but under the guise of doing that I don't want to have little pieces and segments of my evidence which, from where I sit at the moment, may not be important or seem important but at the trial might assume tremendous importance, cut away from me.

With respect to discovery, we are all through with that? As I understand it, both of us are ready to go to trial. We haven't any problems with respect to discovery that I know of, your Honor.

The Court: Well, I was informed at one meeting here that it was not completed, that is, the Defendants'. I believe the statement was to the effect that it would depend upon what limitations were made at this time as to the nature and extent of the discovery that the Defendants had yet to take. Now, is my recollection correct?

Mr. Meserow: I made that statement.

The Court: Isn't that a correct statement?

Mr. Meserow: That is correct.

42 The Court: Somebody made it. I do not recall who it was.

Mr. Thompson: Well, the statement that was made, your Honor, is pretty much as you have stated it, that if these areas are opened up, which we think clearly are not areas that should be inquired into, and we are honest in our feeling about that, if they are opened up then, of course, we do have to take discovery to meet some of them.

That has to do with the Interstate Commerce Commission thing. It has to do with certain real estate transactions, and so forth.

The Court: We will let Mr. McConnell proceed, but I thought somebody had made that statement here.

Mr. Thompson: That is correct. It is all concluded, as Mr. McConnell says, except if these areas are opened up that we think we should not have gone into on discovery and haven't.

The Court: Go ahead, Mr. McConnell.

Mr. Thomas McConnell: Speaking for our side of the table, as far as our side of the table is concerned, as
43 I understand it, and I am satisfied in my own mind it is true, we haven't any discovery program ahead of us at the moment unless something develops that the other side should bring in here.

So far as our proofs and so far as what we are using as preparation for trial, we have practically completed it. I understand there are two or three depositions that might be taken, one of Cross's son and one of some machinery equipment company, and maybe one or two others, but it is nothing practically, in view of the time that is available for us prior to trial.

In so far as wasting money is concerned, whatever money we have wasted we have wasted already.

Now, to get back to the over-all, and I do not think this case can be dealt with except on the over-all and I do not want to be maneuvered into a position where we are dealing with it in little segments because the ordinary strategy of defendants in an anti-trust case is to take each little part of it and examine it and decide
44 there is nothing wrong with it and then throw it away, and when you get through with it all there's nothing there that's standing alone is illegal.

That is true of every conspiracy under the anti-trust

laws, because it is not the individual acts that are illegal; it is the over-all intendment and purpose of the conspiracy which makes it illegal, and no conspiracy of this kind can be carried out except by individual acts which standing alone are legal.

Now, it is the job of the trial advocate at the trial to put those things all together, and how they are used changes from day to day as you are dealing with the situation before the jury. We may compare it to a supply of facts and evidence which we have accumulated here on pre-trial and discovery procedures, which we have a right to do under the Act, and then to have any large segment of that just put aside where we can't use it under any circumstances at the trial, I say utterly precludes us in the proper presentation of the trial of our lawsuit and I think that is exactly what my opponents are trying to do.

I do not think we can lose sight of the over-all thing here. As Judge Thompson says, this is a very simple conspiracy and we intend to keep it that way. We have a conspiracy here which, as I say, is proven if by nothing else, by the contract which was entered into between Keeshin and the railroads and it grows out of this situation, if the Court please:

We had this business; the Parmelee Company had this business with the railroads for years and years and years, I think 103 years. They never had a contract. It was done on an at-will basis. Never at any time did those arrangements preclude any competitor from coming in and competing on the same basis that we were competing, and the fact that it didn't is shown by the fact that Keeshin did come in and compete and others came in and competed and we never tried at any time to tie any of that up into contracts or agreements or anything of the kind. It was done on an at-will basis, the terms

changing from time to time as conditions differed, but never at any time was there anything that tied that business up in the hands of Parmelee as against Parmelee's competitors. Then something changed. Then along
46 came Mr. Keeshin and through the entre which he had through Cross to the railroads he emerges with a bid for a five-year contract, which he insisted upon, as the evidence now shows, because he said he couldn't get together the trucks and the equipment which we had accumulated over a period of years unless he had this five-year contract, and to meet that five-year contract we bid on the subject matter which was offered to us by the railroads, and it has been our contention all the way through that that is an illegal arrangement, it was an illegal arrangement, that we had a right to go on with the normal expectancy which we had from our relationship with the railroads free from illegal intervention of this conspiracy and resulting illegal contract.

Now, it is just as simple as that, and what you might call around on the periphery of the case, the collateral issues more or less show the intendments which were utilized and used to bring about this meeting of the minds to take business from the normal expectancy of business which Parmelee had away from them and
47 give it to Keeshin and preclude us for a period of five years from ever getting back into the picture, where we lost our personnel, where we lost our equipment, where we lost all our chance of being in the business, and we were ended in it once and forever by that illegal contract. Now, it is just as simple as that.

Now, to sit down here in advance, and I am going to let Mr. Freeman deal with these specific questions of evidence, but to sit down here in advance and say that this evidence, looked at alone, out of context with everything else we are going to prove in this case, cannot be

admitted at the trial—I have never heard of a ruling like that in any case, and I do not believe counsel can point to a single ruling in an anti-trust case or any other case where whole segments of evidence have been excluded in advance of trial.

The Court: I might say in response to that, Mr. McConnell, that I am not going to rule on any specific item today. I am going to list to the whole context of it, and I want to have each item argued so I can
48 review it in connection with the pleadings. This is a part of it.

I have spent quite a bit of time on this; I spent quite a bit of time over the week-end, and when this first came up, and I am not aware of all the areas and certainly I do not expect to enter a ruling on each specific item today.

I intend to have you come back here, probably in June, when I have had an opportunity to examine it. I do not expect to preclude you or to say that you have to go out into other areas, because with what is involved in this case and with the issues and acquainting yourself with the pleadings, it is not something you do overnight.

You gentlemen have lived it with a period of over three years, and while I have lived with it for a few months I have also been living with a few other cases, so I wanted to get the outline in both of your minds within the general area, and then we come down to specifics and then I will attempt to reach a conclusion covering the general area and covering the specifics, at which time I will have all of you in here when that
49 is done, so we have a clear understanding of it.

I intend to have the transcript of the arguments written up and then go through and examine it all carefully, and I say that I am not going to—I feel that if there are areas within which we know how the trial is

going to proceed and the defendants know how the trial is going to proceed, those can be delineated, but I do not intend to break it up and try to rule on segments of it, to break it up. What I am going to look at is the general effect of what my ruling will be on the whole over-all of the case and if there are segments that enter into that, that I will determine are not a part of it, it will be on the basis of looking at the pleadings, the issues that are joined and what I feel should be in the scope of the trial.

Does that answer your question?

Mr. Thomas McConnell: Yes. It answers my question. There is only one other consideration I want to advance, and then I would like to have Mr. Freeman answer the specific area of evidence which the Judge discussed.

50 We have been in discussions among ourselves on how to raise the issue of legality of this five-year contract, whether—

The Court: You mean amongst the Plaintiffs?

Mr. Thomas McConnell: Amongst ourselves, yes.

The Court: Yes.

Mr. McConnell: We have lawyers in New York, a number of lawyers, and we have discussed it back and forth.

We had come to the conclusion that the way to raise it was probably by a motion for summary judgment on one aspect of the case. As far as I know it has never been up to be briefed in any form but it does appear in the reply brief which was filed by Judge Thompson, in which the statement is made in the brief, which is made here today, that this five-year contract is perfectly legal and that it's out of the lawsuit and we are all agreed on that.

Now, I would like to raise that question as a pure question of law. If it is decided that that contract is

illegal on its face, per se illegal, it may dispose of practically everything in this lawsuit except the question
51 of damages. If there ever was a situation where, to shorten up the trial, something should be brought up and disposed of in advance, that is it, because we are all agreed there is a contract. We are all agreed that the terms of the contract are thus-and-so.

There is not the slightest dispute in the world about what it is. The only dispute we have is whether or not it is legal or illegal. Judge Thompson says it is perfectly legal. I don't know where he gets it; there isn't a case in the books that holds that. Every bit of law is against him, and—

The Court: Well, apparently there is a difference of opinion on that.

Mr. Thomas McConnell: (Continuing) —and we say it is absolutely illegal.

The Court: The way that could be raised would be on a motion for summary judgment with supporting affidavits, to which they have the right to reply. I do not have that matter before me for determination at this time, but certainly you have the right to bring that up and to explore into that. Very frankly, I have not explored or examined or considered it.

52 If there is such a difference of opinion then certainly the rules provide a way that you can present it and it can be considered. It is an issue and you have the right to bring it up, but we are within the scope of Judge Miner's order here on the admission of these documents and the areas that should be considered on that.

I don't think, at least not from my examination of it—maybe I did not see it—that the question of the contract is before us here today.

Mr. Thomas McConnell: Only except in so far as it has come up in his brief.

The Court: Oh. You mean the points that are raised in connection with the evidence?

Mr. Thomas McConnell: He has raised it in his reply brief.

The Court: I understand.

Mr. Thomas McConnell: I am simply stating my position that I do want to have it raised and determined, and of course, we know that we can raise it and will raise it in due course.

The Court: Yes.

53 Mr. Thomas McConnell: But as long as it has been put in his brief and raised I want it perfectly clear on our pre-trial conference what our position is.

The Court: That you do not consider it a legal contract.

Mr. Thomas McConnell: I certainly do not.

Mr. Thompson: Well, if the Court please—if Mr. McConnell is through.

The Court: Have you anything else?

Mr. Thomas McConnell: There is nothing more I want to say.

The Court: Do you have anything to say?

Mr. Freeman: Yes.

Mr. Thompson: May I interpose one thing there, just on this general thing? May I just have a word?

Mr. Freeman: You mean just on the legality of the contract?

Mr. Thompson: Yes.

Mr. Freeman: Surely. Go ahead.

Mr. Thompson: I made no statement, and if there was anything I said which gave Mr. McConnell that impression or the Court that impression, I do want to

54 say that I made no statement that we all agreed that this was a legal contract. What I said in my brief and what I say orally is that the issue presented in this

case, on this proceeding, is confined by the pleadings. They say that the violation of law, that is, the issue Plaintiff complain of, is the agreement among the Defendants to eliminate competition for the railroad transfer business and to confer a protective monopoly of that market on Keeshin.

Now, in the course of my discussion on that I said that when Judge Sullivan ruled on our motion to dismiss the complaint he said, following two Supreme Court decisions which he cited, that the fact that the contract was one giving Keeshin an exclusive transfer service was not illegal and he also ruled, following two Supreme Court decisions, that the fact the railroads acted together in drafting the contract did not make it unlawful.

Now, those two questions were presented and decided already. Of course, counsel can open it up again by any motion he pleases, but it is not before you. All I want to say is that I did not say and do not mean to
55 indicate that counsel for the Plaintiff are in agreement with my position that the contract is a legal contract. I am influenced simply by two decisions of the Supreme Court of the United States and by several decisions of other Federal Courts and Federal Agencies and have seen nothing to the contrary.

Mr. Thomas McConnell: Neither of which decisions are in point in this case.

Mr. Thompson: Well—

The Court: As I say, gentlemen, that is not one of the phases we are discussing here. If it is brought in, I will go into that. If that point is to be raised then certainly my decision on what we have before us might be postponed at this time, if you are coming in on a motion for summary judgment with affidavits, until I passed on any motion for summary judgment.

If you are considering doing that—I am not asking you

to say now—but after our lunch hour I would want you to indicate if that were going to be done before we conclude today, because that is an element that would then affect the over-all of this.

56 Mr. Thomas McConnell: We have decided we are going to do that.

The Court: You have decided you are going to present such a motion?

Mr. Thomas McConnell: Yes. We will present it at the earliest time we can.

The Court: Well, we are in the midst of all of this. I am going to get all of the facts on every specific here today within this area so we do not have to go over this ground again, and if you do present a motion for summary judgment then we can see what that presents and what it will involve and how much time there would be in connection with it.

Now, do you have anything to say on the general aspects of it, Mr. Freeman?

Mr. Freeman: Yes, Judge Robson. I do not want to acquiesce nor do I want to get into a controversy with Judge Thompson with respect to what was presented to Judge Sullivan in connection with this contract. Let me just say that in my opinion the legality of the contract was not fully briefed, so let's leave that out.

The Court: I think the record will speak for
57 itself. You have the right to present a motion within that area.

Mr. Freeman: Let me try to discuss with you for a moment a matter that seems to be troubling you, and that is the question of the Interstate Commerce Commission problem and the extent to which it broadens or limits the scope of trial and of the discovery areas.

I might introduce the subject by pointing out that in our complaint we do allege in paragraph 26 that the

Interstate Commerce Commission was created and matters of great importance were pending before them, to be decided by the Commission, and the Defendant railroads had matters of great importance pending before the Commission. This allegation is admitted by all Defendants.

In addition, in Paragraph 28, and this is very significant, we allege that:

"Under the declared policy of Congress and usages and regulations developed by the Commission, members of the Commission are under a duty to avoid private dealings with railroads which would impair
58 their ability to deal impartially with persons subject to the jurisdiction of said Commission."

This allegation likewise is admitted by all of the Defendants. Before I turn to this Baltimore & Ohio finance matter which seems to be—

The Court: Well, let me suggest this, Mr. Freeman: We are going to discuss that under a specific area. Judge Thompson raised it in answer to a specific question that I had asked.

I do not want to preclude you unless you want to make some general statement, but we will come down to the specifics of that, and won't it be more or less of a repitition of what you would have to say now within that area, in that we are coming to the specifics, and I want to hear a statement from each side and their ideas in connection with it? I do not want to preclude you, however.

Mr. Freeman: Well, let me then—

Mr. Thompson: Well, I am ready to hear him now on the specific on the Interstate Commerce Commission question. I think I have opened it up sufficiently.

Mr. Freeman: You have said all you wanted to,
59 Judge?

Mr. Thompson: At the moment.

The Court: All right.

Mr. Freeman: Before considering that issue, and without repeating the remarks that we made in our opening memorandum with respect to those facts that are established through the discovery process, and remember, we are not dealing here with evidence already presented at the trial, but we are dealing with matters that have been developed in discovery, I would like first to just briefly outline some facts that have, in our opinion, been misstated in their reply brief and in order for you to judge the specifics of each area of proof you should be advised, and I would like to emphasize them.

The negotiations with the railroads that preceded Cross's entry into the picture had gotten to the point where several prominent railroad officials and all of the railroads unanimously had come to the conclusion that their negotiations with Keeshin and with Willett and others were leading them nowhere and they should continue with Parmelee, and they would not change from Parmelee unless they received a substantial reduction in the coupon rate that was involved.

The reduction that was spoken of in the railroad memorandum is from $1.20, which was then being charged, to $1.00 or $1.10 as a reduction.

Now, I might pause and out of chronological content point out that the contract that was awarded to Keeshin was at a starting rate of $1.20 and at maximum prices for the five year period higher, higher rates than had been proposed in writing for a six year period by Parmelee, so that the whole genesis of the negotiations are negatived by what they actually did for Keeshin, because the record is unanimous that all of the railroads said, "We are in these negotiations for the sole purpose of reducing costs if we can. We are thoroughly satisfied with Parmelee's service", and they say so in writing and repeatedly.

Now, the claim is made in the brief, and I am going to try not to argue the facts as such, but just a few points, that this particular decision was reached by subordinates of the railroads and it was not until it came to the officials that the actual selection was made. At another
61 point it is pointed out that the top officials of the railroads did not participate, when they seek to save the presidents' skins, but the decisions that were made in March and April to continue with Parmelee, and prior to Cross's intervention, were made by the Vice-President of the New York Central Railroad on March 24th, who said in a letter to us:

"Your proposal is eminently reasonable and I see no reason why it should not be accepted."

This is the Vice-President of the New York Central. It was said by the Vice-President of the Baltimore & Ohio Railroad in a memorandum that he wrote to the President on April 11th, in which he spoke favorably about our proposal and indicated what was to be done and never even mentioned Keeshin as a competitor, even though Keeshin's full proposal had been before him and fully discussed.

It was accepted by the General Passenger Traffic Manager of the Santa Fe and of the Illinois Central. Now, these are the top Passenger Traffic people. A dis-
tinction must be drawn between a passenger agent,
62 who is merely a local fellow, and a General Passenger Traffic Manager, who is over all the railroad as far as passenger traffic is concerned.

This statement that the decision to continue with Parmelee was only by some subordinate passenger official is not so. As a matter of fact, as the story progresses we find that the Vice-President of the North Western Railroad has a memorandum saying, "Continue with Parmelee", and that memorandum is dated May 27th. We

have others of that character. So much for that.

The story as told by Keeshin and Cross, and concededly by them, is that Keeshin on March 29th, 1955, went to Washington and met with Cross; that he asked Cross to put in a good word for him with the railroads with whom he was negotiating; that Cross knew he was negotiating with six railroads; that Cross from time to time, and Cross so testified, from time to time reported to Keeshin of his contacts with Simpson, the President of the B. & O., Feucht, the President of the North Western, and possibly Johnston, the President of the Illinois Central.

63 Cross further testified that Keeshin—or rather, Keeshin testified that he called Cross after he was awarded the contract and thanked him for the help he had given him, if any. Cross had 34 telephone conversations, long distance, with Keeshin. He had many with railroad people. His activities are fantastic.

The Court: Well, now—

Mr. Meserow: We are getting away from the issue here a little bit, your Honor.

Mr. Freeman: Well, let me—

The Court: We do not need a lot of detail.

Mr. Freeman: All right.

The Court: Here is the point, as I understand it, that was brought up: That is as to whether or not you should be permitted to go into all of the cases. Now, that was the premise on which it came up. Now we are going into the telephone calls, which are another issue, and all that.

Mr. Freeman: I did not mean to do that.

The Court: I think, Mr. Freeman, the area that I see, and Mr. Thompson said it was agreeable to go ahead, are certainly we are covering many of the factors

64 that we have involved here, but the thing I am trying to get through my mind and that I think we ought

to address ourselves to specifically more or less as outlined, because the extent to which you are going here now shows that we are going to cover the whole thing rather than coming down to this one as to what is the factor of the various cases that were then pending before the Commission.

Mr. Freeman: I really meant this only as a predicate to this, and let me just make two more sentences, and that will complete my preliminary statement.

The Court: I do not want to preclude you, Mr. Freeman.

Mr. Freeman: I appreciate that, and I appreciate the direction, your Honor. The point of this matter is that Cross did visit Baltimore and the President of the B. & O. He visited Philadelphia and the Vice-President of the Pennsylvania. He did visit various people in Chicago. He made telephone calls to these various railroad people.

All these telephone calls and all of these visits were charged to his own personal expense. When he made
65 a call at the Interstate Commerce Commission he would charge it to his own phone. These, it seems to me, establish the fact that these visits and these calls were not on official business.

To get to the Baltimore & Ohio in the Interstate Commerce Commission matter: Cross did testify that he visited Simpson in Baltimore at his office and he spoke to him about the Baltimore & Ohio financing matter which was the most important thing then pending as far as railroad financing was concerned. It was a pending matter.

In the finance matters before the Interstate Commerce Commission three Commissioners form a Division, and—

The Court: It is conceded by both sides that that was an ex parte hearing and not an adversary hearing.

Mr. Freeman: It was —

The Court: Is that conceded by you?

Mr. Freeman: No. The proceeding is ex parte to this point, that the Baltimore & Ohio filed an application, but under the statutes that are controlling notice is provided to the States, notice must be provided to those
66 security holders that are affected by the changes, the matters involved qu stions of great moment with respect to the interest rates, the proportions of securities and the timing of the issue, and Simpson acknowledged that that becomes very important, getting the decision done today rather than two weeks from today because there are underwriting and other problems, and the problems are controversial in that they are of tremendous significance and involved a great deal of hearings and discussion.

The point of it is, and the only thing we bring in as far as this case is concerned is that Cross concededly went to Baltimore and talked about the B. & O. financing in the President's office and at that time inquired about the transfer matter, and it is also conceded by both Simpson and Cross that every time Cross called him, and there are six or seven such calls, Cross talked about the transfer, and when we asked Mr. Simpson whether Cross was requesting information he said, "Not requesting; he told me."

Then when we asked Mr. Simpson how many times
67 he had called Cross, because Cross had said Simpson had called him two or three times, he said, "I only called him once to give him the status of the transfer thing", and when we asked him again he said, "You have a helluva memory", which was his own language, but immediately thereafter we found a notation that he had called Cross and inquired about the financing problem. He had called Cross privately at his home in Charle-

voix, and the next day Cross appeared in Washington to hold a meeting with the B. & O.

We are not interested in whether the B. & O. financing was good or bad, whether that decision was a good one or a bad one. I think it is almost possible to concede that the decision was a valued one and a correct one, but the important thing is that there were many, many facets of that decision that were problematical, that were difficult as far as the railroad was concerned.

For instance, one of the things that was very important there was, would the Baltimore & Ohio be exempt from competitive bidding, and they were ultimately ex-
68 empted. There are a whole series of decisions that come out of the Commission. This is not a ministerial, administrative thing. This is a series of problems that had to be resolved, and to simplify it by calling it ex parte is quite aside from the point.

What we would present in this record is that Cross had these conversations that I mentioned to you, which are conceded by both Cross and Simpson; that they occurred contemporaneously with Cross's requests for information or with having told Simpson about the transfer matter, and that the B. & O. hearing itself on the basis of the official reports of the Commission was a very important matter.

Actually, we do not need the official reports of the B. & O. because the record itself, both Simpson's testimony and Cross's testimony, state that the B. & O. financing was a very important matter to the B. & O.

Now, this, we think, is very, very significant, there can be no ducking it, and to claim that they will be put to a tremendous amount of expense in discovering what the B. & O. financing is to me does not seem realistic nor honest.

69 The Court: Now, let's explore that for a moment.

Mr. Freeman: Yes.

The Court: Statements are easy to make, but if you put that in, all of this discussion, then of necessity doesn't the defense have to bring in all the facts? I am looking at it from the trial viewpoint. If we go into all of these —I am not saying you haven't the right to, but once you go into that factor, together with all of the other dealings that were had, that is in the minds of the jury. It is not like trying it before me; I can supposedly only consider that which is properly admissible, but once that factor comes before the jury, if the defense is properly going to meet that, don't they have to go into the details of what was involved?

That is, I assume that they would want the right and I would have to then rule on their right to introduce in the record all of the proceedings, to call in all those who were acquainted with it and the factors concerned with the case that was then before them, the same as it would be on all of the other matters that were pending
70 before them.

You having been allowed to go into that, then I have to rule on that within their area, isn't that correct?

Mr. Freeman: That difficulty which you pose as an academic question, does not hide the fact—

The Court: I did not pose it as an academic question. I am posing it as a practical question.

Mr. Freeman: As a practical question, yes. That does not hide the fact that the conversation did occur, that it serves to explain the motivation of the B. & O. in doing this. Now, let me just point this out to you, which does not appear, and which we haven't developed: the Baltimore & Ohio President was contacted by Cross, and I will try to give it to you simply and accurately.

The General Passenger Traffic Manager says he was called into the President's office and said, "Jack, what

is the status of this?" The next step we find is that the Baltimore & Ohio's Passenger Traffic Manager goes up to New York, and we have a memorandum of April 21st in which he reports a conversation he had with his
71 counterpart in New York in which he advocates, on April 21st, that they change away from Parmelee to some other carrier.

The Baltimore & Ohio — this man, this same man who has contacted the President, now, becomes the leading spokesman at two meetings of the Committee. He had never previously come to Chicago, or not in ten years, because he was in Chicago ten years prior, but he had not previously come to Chicago to attend any of these meetings. He suddenly shows up to attend these meetings. He has no discussion, and this is all in the record — he has no discussion with the local passenger agents who have been attending all these meetings and who are thoroughly informed.

He comes in in the morning, he attends the meeting, he leads the discussion in both the May 19th meeting, which is the significant meeting, and in the June 3rd meeting, and in fact he makes the motion for Keeshin in the June 3rd meeting.

Right after the May 19th meeting he prepares a memorandum in which there is a suggestion as to how
72 Keeshin should revise his bid to make it more attractive. In another memorandum that he prepares when they are concerned about how the fourth and fifth year rates should be, what maximum they should have, he suggests a maximum rate which is four or five cents higher than anything we had proposed.

This is the scope. This is what we think, and what we believe a jury would certainly find, that there was this contact made by Cross; that it is conceded in all of these contracts Cross discussed with Simpson, the President of this railroad, the Chicago transfer negotiations.

At the same time, contemporaneously with it, he discussed the Baltimore & Ohio financing problems. This is what he did, and if that leads to a burden of attempting to disprove that that may have motivated the Baltimore & Ohio, we find that their activities from then on are so drastic, and the Baltimore & Ohio is only a very small element in this transfer, they represented only 4.3 per cent—

The Court: Now, you lead right to the question that I put.

Mr. Freeman: Yes.

73 The Court: Once that is permitted to go in, then you have all of the other elements of all of these numerous cases that might or could—I do not know what you have gone into on your discovery, because I do not have that before me, but you may have the question with 21 railroads—

Mr. Freeman: Oh.

The Court: (Continuing) —and a series of 30, 40 or 50 different matters that were pending before the Commission wherein or whereby they might be influenced.

Mr. Freeman: All right. I see.

The Court: Now, that is what I am thinking about, is this whole area.

Mr. Freeman: All right.

The Court: Once we open it up, the thing I think we have to attempt to look at is this: Is it germane to the issues? Once we start going into that—

Mr. Freeman: We do not propose—

The Court: (Continuing) —what will the limits be and how far are we going to go? Your brief is not completely clear on it, because you say that there are just certain cases—I was trying to find it here in

74 your brief, but I cannot locate it immediately. As I recall it, what you said you wanted to go into are just certain cases.

Mr. Freeman: Six cases, yes.

The Court: You mentioned six cases.

Mr. Freeman: Yes.

The Court: But you do not limit it to six cases—

Mr. Freeman: Well—

The Court: (Continuing) —as far as what I have involved is concerned.

Mr. Freeman: Well, let me say this: The fact is conceded that there were many cases of great importance pending. We don't have to submit a list of cases and we don't propose to.

The Court: I am not saying that you have to submit a list, no.

Mr. Freeman: We do not want to.

The Court: I am exploring the general issue we have involved here.

Mr. Freeman: Our aim would be to limit our presentation of matters involving the Interstate Commerce Commission to those matters where Cross did have private conversations with Defendants and their agents or
75 where there was a direct relationship, which we can establish, between Cross, the transfer negotiations and the particular case pending.

The Court: All right. Let me ask you this question, Mr. Freeman: Would you, for the purpose of the record, be willing to stipulate that just six cases is all that would be involved and to the extent you put it in your brief?

Mr. Freeman: Six cases is all we would specifically refer to.

The Court: And it would just be the element of referring to the fact that they were then pending, because it is not specified as to whether there would be that.

Mr. Freeman: Yes. I believe—

The Court: You see, what I am getting at is here,

on all of these you have the question of limitation of proof, and it is my understanding of the pre-trial procedure that after we once reach an accord on it I can either dictate the order or a stipulation can be prepared which is agreed to between the parties, so I come to that point, which is a part of this:

76 Is that what you would agree to, and all that would be referred to is that they were then pending before the Commission, these six cases?

Mr. Freeman: And their scope, whether it be revealed by the official report, or whatever it is, so whoever had to consider it would understand what its scope was.

I think we could stipulate to what you have suggested. I would prefer that you let us come up with such an agreement at two o'clock, and I am sure there would be no difficulty. Just to restate what you have said so that I understand it, we would agree that we would only specifically refer to six Interstate Commerce Commission cases by name, that is, six cases, the B. & O. finance matter and the others—

The Court: Providing they were properly admissible.

Mr. Freeman: That is providing they were properly admissible—and we would, in connection with those cases, merely indicate, and not extensively, their magnitude and their scope or their significance to the railroads that were involved.

77 We would not refer by name to any cases beyond those six but, of course, we would reserve the right to make the statement, in the form of the allegation in the complaint, that there were many cases of great importance pending before the Commission.

The Court: Well, when you say "many", that is—

Mr. Freeman: Well, I believe—

The Court: (Continuing) —leaving it open.

Mr. Freeman: There are matters of great importance. I should not have said "many." I should have said, there were matters of great importance pending before the Commission, as indeed there are always are. The jury should understand what the Interstate Commerce Commission means. Now—

The Court: I am not saying that they shouldn't.

Mr. Freeman: No.

The Court: What I meant was, if there are many then the floodgates are open. If there are six, then at least it is tied down within that area. Now, I do not know what the Defendants would have to say within that area, but as I say, I am not going to consider it on the basis of each one of these items. I am going to consider this all on the basis of the over-all trial, so
78 that you have a right to present your issues and they have the right to present theirs, but certainly we have to have rules of the game and limitations, otherwise I can see where this could go beyond all bounds.

Every advocate has the right to place his interpretation upon the work within what he feels is a fair scope, and as I look at the pre-trial procedure here, the purpose is to say, "Now, here is the path we are going to follow" and this will be either what we agree to or what I rule will be agreed to. If you can have agreement on these issues then, of course, that is a satisfactory way to proceed, but certainly within many areas here I can see where there would not be agreement, and justifiably so.

Let me make this suggestion: We have rambled a little here this morning. This afternoon I would like to get down to the specific items that are raised and we will deal with them one at a time. I want to have it from this viewpoint: In other words, we are looking at it from the over-all scope of how this is going to affect the entire matter.

In other words, with respect to your suggestion
79 here as to just six cases, and only to mention them, whether the Defendants would agree to that or not, I don't know.

Mr. Thompson: The answer is "No."

The Court: Well, looking at it from the plan of the trial of the case, I agree with the Plaintiffs within this area, that I do not intend to just consider things by segments. I am going to consider it on the over-all effect of the case and that is the reason, as I say, that I address myself to the fact that I was going to consider it all from that viewpoint after more study.

If we can bring it down to what we have within the memorandums here, and any explanation, it would be helpful to me as to what your ideas are on the areas of this, and what it is going to effect in the way of detriment if it does not pertain to the issues of the case or if we are bringing in fragments that would divert the attention of the jury and they might be prejudicial and they do not deal with the issues.

Now, are there any questions you want to ask before you go to lunch so you can have the opportunity of lining it up so we can go through this afternoon?
80 We will go through until about four-thirty or quarter to five if necessary

Mr. Thompson: I think we can finish before that, because we have covered the general area already.

The Court: I think we have covered the general area, yes.

Mr. Thompson: All I want to say about this Interstate Commerce Commission thing, and it will not take a moment to wind that up, is this:

Number one, we do not agree in any degree with the statements as to the conversations and what-have-you that occurred between Mr. Simpson and Mr. Cross.

There was no discussion, as we have pointed out in our brief, of either subject between Simpson and Cross. It is a mere mention of a mere inquiry of Cross as to how Simpson was getting along with his refinancing and a mere inquiry of Cross from Simpson as to how the negotiations were coming on in Chicago. There was no discussion of that whatever.

Now, on this matter of limiting it to six, they would be picking out the six proceedings before the Interstate Commerce Commission which suited their purposes,
81 whatever they may be. We would have to review all six of them and prove that there was nothing wrong in all six of those proceedings, and I don't yet know what any of them are except the one he has mentioned about this refinancing.

There would also be the matter of our bringing proof, if we have to clean up Mr. Cross after they have smeared him by piling on the dirt, we would have to bring on all sorts of proof to show what a fine and honorable and outstanding Commissioner he was, and thereby bring in a lot more cases, perhaps.

The thing is utterly endless. There is no limitation, as we see it, that could possibly be put on it, and it seems to us that there isn't the slightest probative value to any of this Interstate Commerce Commission thing.

Among other things—we have outlined it in our brief in detail, and your Honor does not need the details here—the Interstate Commerce Commission thing involves a very wide area of inquiry as to the proceedings of the Commission, the organizational set-up of the Com-
82 mission, the rules governing the Commission and the Divisions and all sorts of things in these documents, and of course it is our position, and we have stated it, and I do not know how I can state it by emphasis by repetition, that if it is ever opened up it will

divert the attention of the jury beyond a point of recovery.

I just do not know how it would be possible to get the picture of the Interstate Commerce Commission before the jury. I don't have any conception of it, myself. My contacts are extremely limited, but as a man who ought to know something about what goes on in this world I have no conception of the breadth and scope of the Interstate Commerce Commission, and of course, there is every day, not at any particular time but every day there is pending before the Interstate Commerce Commission matters which may be vital to the economic life of some or all of the railroads of the country. There is a continuing situation of that character.

Now, we have to prove that to the jury. We have to prove that the Commission has always been honest in its decisions and it has always been correct in its decisions — an impossibility, of course — and we
83 would have to prove that all the Commissioners were asleep and Cross was running the Commission.

It is just unfathomable, where we would be going, if we ever got into this Interstate Commerce Commission thing. I do not see how there is any argument on the other side of it myself. I must confess that I must be blind.

The Court: All right, gentlemen. I will see you at two o'clock. Thank you for coming in.

(Whereupon the pre-trial conference in the above-entitled cause was recessed until 2:00 o'clock p.m. of the same day.)

84

* * (Caption—No. 56 C 323) * *

Monday, May 11th, 1959,
2:00 o'clock p.m.

Parties met pursuant to recess.

Present:

Mr. Lee A. Freeman,
Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Paul Stevens, and
Mr. Herbert B. Lazarus,
appeared on behalf of the Plaintiff;

Mr. Floyd E. Thompson, and
Mr. Philip W. Tone,
appeared for defendant railroads and railroad presidents;

Mr. Albert J. Meserow,
appeared for defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Louis A. Witry,
appeared for Defendant Hugh W. Cross.

85 (And thereupon the following proceedings were had herein, in chambers, to-wit:)

The Court: The next question we have on the list here is the evidence concerning the investigation of the permanent Sub-Committee of the Senate.

Mr. Thompson: Well, that question, I think, has been rather fully presented in the briefs.

The Court: That is right.

Mr. Thompson: There is one of the documents which I cannot conceive any lawyer would argue could be admitted, and that is the report of the Senate Committee,

so I will not spend any time on it unless there is some defense of even listing that as a document which could be offered.

Obviously, it is hearsay as to everybody and it did not occur until 1956, which is long after the alleged conspiracy was over with. It could not by any stretch of the imagination be anything that occurred during the course of the conspiracy or in furtherance of it. Therefore, I will pass that.

The Court: Is there any question on that in your mind as to the report?

86 Mr. Thomas McConnell: Yes. There certainly is. It is a public record.

The Court: Well, then —

Mr. Thomas McConnell: Just because Judge Thompson thinks it is very plain, we do not agree with him.

The Court: That is the reason I asked.

Mr. Thompson: Well, that is all I have to say about it. It seems to obvious that I do not care to spend time discussing the obvious.

The Court: Well, the other area you have there is the question —

Mr. Thompson: There is much that I could say, but I think it has already been covered, and it does not seem necessary.

The Court: Well, you can present your points on it and then we will hear what Mr. McConnell and Mr. Freeman have to say in their area.

Mr. Thompson: Well, now, of course we have made our statement in our briefs as to the use which may be made of the examinations of these various witnesses. Of course, it can be used only for two purposes, one for proving admissions against interest that were made by any one of these persons and that, of course, would

87 be binding only on the individual, and that would

not be admissible when others are on trial if its reception would be unduly prejudicial to them, because it certainly is hearsay as to them.

Now, the other aspect of it is that if any one witness testifies differently than he testified at that proceeding, obviously you can use it for purposes of impeachment, but that would impeach only the one whose testimony was under consideration and it would not be affirmative proof of any fact.

Now, what we think is the even more serious aspect of that segment of our motion is the mere fact that Cross was investigated by a Senate Committee, something over which none of the other Defendants had any control, and could not have had any control over. They were no party to it. Some of them were called as witnesses by the Senate.

The investigation, of course, is one that follows no rules or rhyme or reason. The Senators, when they ask a question, don't ask a question; they make a speech.

One is not allowed to challenge their method of ex-
88 amination and counsel is not entitled to participate.

There was no hearing or trial in the sense that you could offer any rebutting evidence.

Nobody was being investigated except Cross. The investigation was solely for the purpose of ascertaining whether or not he had been guilty of conduct which was contrary to the public interest, and the only basis on which such an investigation is allowed to be made is for the purpose of legislation, so it was not a trial in any sense of the word and no other party was being investigated.

It was said that Keeshin and Cross were being investigated by the Senate. That, of course, is not true. It seems to us that to even disclose to the jury that there was a Senate investigation of the official conduct of Hugh

Cross is highly prejudicial and something that the other Defendants could not possibly meet. There would be no way they could meet it by any evidence, something to which they were not parties, which they could not control, all of which occurred months after the alleged conspiracy was consummated. In no sense was it any-
89 thing that occurred in furtherance of the conspiracy.

Furthermore, whatever was said there was a narration of past events which, of course, cannot be used in a conspiracy trial at any time, so we think that the legitimate use which may be made of the transcript of the testimony can be allowed without in any wise prejudicing the other Defendants.

The questions that were asked, if they are legitimate questions, and mighty few of them will be, can be read and the answers can be read without indicating who asked the question, and if there is any denial of the answer, of course, it can be proven that that answer was made on an occasion on a certain date in Washington, D. C. Where it was made and under what circumstances it was made cannot have any effect on—

The Court: Let me bring that up. That is one area I do not think was explored to any extent in either brief that came to my mind.

If there is a denial, assuming that all the points you have made are correct, how and in what way would you be able to avoid disclosing that this was taken at a Senate Hearing?

90 Say that Cross on the stand denied he was asked that question and made that statement. This is not a deposition that is on file here that you could take under the Rules of Court. Then you would either have to agree, that is, as between you, that this was the transcript of the record, and if you were not able to agree then the only alternative I can see would be that you would have

to bring in the Reporter who took the testimony from Washington, put him on the stand, and then you are on the horns of a dilemma in connection with the contention that the name of the United States Senate cannot be used.

Mr. Thompson: There is no problem at all. You could call the Reporter and say, "Did you take a statement under oath of Mr. Cross on November 15th, 1955?"

The Court: At Washington, D. C.?

Mr. Thompson: It does not make any difference whether it was in California or where it was, really. Then you would have to ask him, "Was this question asked and did he make this answer?"

His answer would be, of course, that he did. In
91 the first place, there isn't going to be any such question arise because up to now we have never raised any question that the transcript correctly reports what was asked and answered, so the question would not arise; but if it did arise, it is a simple and easy matter to make proof without all the rest of this prejudicial and damaging thing.

The Court: Well, I have not read all of your cases — in fact, I have not read any of the cases except as they are shown in the brief. There is no authority that is clear on this area as to whether or not the name of the Senate Committee would be prejudicial.

I can see your contention that it would be prejudicial, but as far as any authority on it, none of the cases in reading through the briefs here are in point as to the use of the name of the body before which it was taken. For example, if it involved a Municipal Court trial, certainly you would be allowed to use that. You could say, "Did you give this testimony?" and that is the usual and customary way in which it is done.

If it involved a Court of record or if it came up

92 here in connection with a proceeding before the Court of Claims, that is one thing, but this in the area of an exception and I can see the background of your argument with respect to it. Is there anything clearly in point where there was a similar body or a similar investigation?

Mr. Thompson: No cases has been cited. They cited two cases, one of them where it was developed, in that Tile case, I think it was, in New York, where the Legislature had made an investigation of whether or not there was some violation there, whether there was a scheme to fix prices.

Well, of course, all of the Defendants who were on trial were also the subject of that Legislative investigation, and the subject was not allowed to be received, or at least it was not received, in the case in chief. On cross examination of a witness, the Secretary, I think, of the Trade Association, it was developed that they had not carried out the part of their scheme which provided that all second grade stuff should be sold in the foreign market, part of the scheme of keeping the price up in this country, and the question of the fact of the Legis-

93 lative investigation was brought out on redirect examination by the prosecution from this witness, so it is quite a different situation, and there all of the Defendants were the subject of the Legislative investigation and here none of these Defendants, except Cross, were the subject of the Senate investigation.

Another one that they cited was a case which involved the Teapot Dome thing, and I think it was Doheny had testified at some Senate Hearing and it was held that the statement made by him as the President of the corporation was binding on the corporation; in other words, he was its agent and the statement was made. Whether it was good law or not is a question, but it has nothing to do with this.

The question was not raised in that case that is was a disclosure of the fact that this statement was made in some Senate Hearing that was objectionable. In the other case the question was raised in the Supreme Court.

Now, we have no case that is precisely in point. We do discuss some cases in connection with our position
94 here. Of course, it seems to me that the strongest argument against receiving it is the rule laid down in McCormick and many other cases, which is that where disclosure of a fact which does not advance the cause within the limits of the issues made by the pleadings will be highly prejudicial, in other words, where the price of receiving it is far beyond the value of the testimony, then it shall not be received.

Here, it seems to me, there is a clear line of cleavage, where they can use the testimony or the evidence, the transcript, in all respects in which they are entitled to use it and yet not disclose the fact that this was a Senate investigation.

The very fact that the Senate was investigating any public official, of course, would be highly prejudicial. He cannot object that it is prejudicial because he was the subject of it. Cross, of course, is prejudiced by it, but he was the subject of the prejudice and therefore he could not object, perhaps, but what about all these other Defendants who had nothing whatever to do with it?

The very fact that one of their alleged co-conspirators
95 was the subject of a Senate investigation is something we could not possibly meet. There just would be no way for these other Defendants to clear themselves of the smear that would come by virtue of introducing that fact before them, and it seems to me obvious that it would be prejudicial.

The prejudice, I think, is obvious and therefore the question is whether or not the necessities of the case

require the bringing in of the prejudice. The rule is in many cases, many of them — it seems to be a universal rule — that evidence, though it is relevant, will not always be admitted, and at least it will be admitted under the kind of protection that is necessary to avoid the prejudice that may be an essential part of it.

Now, in what possible respect could the fact that there was a Senate investigation prove there was a conspiracy, or in what possible way could the fact that there was a Senate investigation of Cross prove that any of these Defendants, even Cross, participated in the conspiracy?

Certainly, you cannot read that testimony except in so
96 far as it is an admission of Cross; you cannot read that testimony to bind anybody else.

There is no case that I know of that would justify just reading or putting in evidence a transcript of some other hearing. All you can ever use it for is the limited purpose of proving an admission or the limited purpose of using it for impeachment, and of course, we know the limitation of admissions. The limitation of admissions is that they bind only the fellow who made the admissions, and the impeachment simply challenges his credibility and leaves the jury to weigh his testimony, but it does not prove that what he said on the first occasion was the fact and what he says now on the trial is not the fact. It is a mere matter of the question of credibility.

Here is a situation that it seems so easy to protect against the evils and yet give the Plaintiff all the advantages it needs, and there is no challenge about that. So far as I am presently advised, certainly on none of the depositions have we ever challenged the accuracy of the report of the proceeding, and no witness has ever challenged it. The witness has always said, "Well, if that's the record, yes, I made that answer." In fact,
97 I think that they seldom ever qualified it to that extent.

I do not see how that would be limiting the Plaintiff in any sense for proper use of it. The only purpose they could want to use it for would be to smear.

The Court: I will hear your side in just a few minutes, Mr. McConnell. I have a criminal matter which I have to dispose of, and then we will resume.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in chambers, to-wit:)

The Court: What do you have to say, addressing it first to the report of the Senate Committee which you claim is admissible, and second, to the transcript of the proceedings and the use of it?

Mr. Thomas McConnell: Well, the report of the Senate Committee is obviously a public record. I know that Judge Thompson has excluded it summarily and thinks it is pretty obvious it is not admissible for any purpose at all. He bases that on a statement which is contained in his brief, that everything is hearsay in a con-
98 spiracy case against everybody except the fellow who happens to testify to it.

Well, now, that is not the law and it never has been the law and until I heard it stated here today I never even heard it advanced. The law is, as I understand it, and I think we can furnish any number of cases on it, that once a conspiracy is shown to exist — of course, if we don't prove a conspiracy in this case we haven't any lawsuit. Nothing is going to go to a jury. It won't even get to a jury. We at least have to make a prima facie case of the conspiracy.

We are alleging a continuing conspiracy here that continued and had a fruition in getting rid of Parmelee as a competitor in this business. While that conspiracy was

going on statements were made by one of the co-conspirators.

Now, he makes a statement in his brief that statements made in the course of a conspiracy are not admissible against the co-conspirators, and that is certainly not the law. The Court of Appeals in cases I have tried myself has held that it is not the law.

Over the objection of the same law firm I argued
99 that question out in the Court of Appeals and Judge Minton wrote an opinion in which he said that statements made in the course of a conspiracy were binding on all the co-conspirators, once the conspiracy was shown to exist.

Now, here are statements which are made by Mr. Cross in a hearing —

The Court: Do you have that citation in your brief here? I do not remember it.

Mr. Thomas McConnell: No, I haven't. That is the Milwaukee Towne case.

Mr. Freeman: The conspiracy matters were briefed by Mr. Thompson in his reply memorandum. They weren't raised —

Mr. Thompson: I made no statement that a statement made in the course of a conspiracy is not admissible, and I make no such statement.

Mr. Thomas McConnell: Well, you did make it in your brief. I read it.

Mr. Thompson: What I say is —

The Court: Now, gentlemen —

Mr. Thompson: (Continuing) — that it has to be made in the course of the conspiracy or it is not admissible.
100 Mr. Thomas McConnell: All right. We are claiming that this was made in the course of the conspiracy. That is our contention.

The Court: Now, to what are you addressing your-

self, the Senate report or to the hearing before the Senate Committee?

Mr. Thomas McConnell: I am addressing myself to the Senate report first, which is a report made — a public record made on testimony that was taken concerning the subject matter of this lawsuit.

Now, Judge Thompson says that it is not binding on anybody except Cross, that nobody else —

The Court: He did not admit that it was binding even on Cross. That was my understanding. He said it was not admissible for any purpose in this proceeding.

Mr. Thomas McConnell: Well, it is a public record made after a hearing, made after the taking of testimony. Under the Federal Statute it is admissible in evidence if it is competent and relevant — I mean, if it is relevant to the issues we are trying.

By the way, your Honor, we did cite 168 F. 2d. 474. That is cited on page 44 of our brief.

101 The Court: Page 44 of 168?

Mr. Thomas McConnell: 168 F. 2d., 474.

The Court: All right.

Mr. Thomas McConnell: Which holds that it is a public record.

Mr. Thompson: Of course, it is.

Mr. Thomas McConnell: That takes care of the competency of it. The only question is whether it is relevant.

Now, what are we dealing with here? We are dealing with an investigation into whether or not a public official utilized his position of trust and confidence so far as the Government was concerned to make a deal whereby he was exchanging or offering to exchange or giving the impression that he was going to exchange what he could do for railroads on this Commission for getting help for his friend Keeshin. Now, that is the charge.

We have to prove it, of course, but assuming that we

do prove it, certainly the railroads were just as much under attack in that proceeding as anybody else. You can't have somebody dealing in an illegal or unconscionable or improper way with that transaction with the
102 railroads and not have the railroads involved in it, in view of this situation, and that is what they were trying.

So what happens? He up and resigns, right in the middle of the thing. The whole proceeding, it seems to me, is a terrific admission against Cross. He was charged with this. Nobody misunderstood what he was being charged with. He was being charged with using his position of trust and confidence to feather his own nest, to get a job with Keeshin, and to procure the joinder of the railroads in a scheme to get rid of Parmelee and give the business to Keeshin. That is what the charge is. That is what we are trying to prove.

To prove it you have to show that there was something that did occur. There was a public hearing by the Senate properly called, properly instituted, and a report was written and Cross in the face of the charged resigned and quit and gave up, even though he was at that time Chairman of the Interstate Commerce Commission. It is a terrific admission against him.

The Court: To summarize it, then, within this area and we are just addressing ourselves now to the re-
103 port, you contend that for the purposes of this trial you would have the right to introduce, as a part of the record, in that it is a public document, from the Annual Report of the Committee on Government Operations made by the Permanent Sub-Committee on Investigations, their statement which is contained on page 28 and page 29 of the report — maybe it goes further.

Mr. Freeman: To page 34, your Honor.

The Court: (Continuing) — through to page 34, which

contains parts of the testimony of the various witnesses who were subpoenaed to appear or appeared voluntarily, and which are just excerpts, that that should be admissible in evidence as a public document?

Mr. Thomas McConnell: Yes.

The Court: Including all of the —

Mr. Thomas McConnell: Everything that is in that opinion or in that report. It is a public record. It is so defined by the Statute. It is certainly binding on Hugh Cross. He was there.

The Court: You contend that that is admissible under the Stasiukevich vs. Nicholls case, 168, Federal?

Mr. Thomas McConnell: Yes, and we contend that once it is shown that Cross is in this conspiracy, and
104 that is what this charge was, really, a charge of a conspiracy in which he was a party, we have a right to show it against all of them.

The Court: What were the facts in that Stasiukevich case?

Mr. Freeman: I read the case and cited it, but I do not have it at hand.

Mr. Thompson: Well, the Stasiukevich case involved some hearing on deportation, and the Un-American Activities Committee had made a report that commented that the objectives of the Communist Party were thus and so and that finding of fact, the Court said, was admissible.

Of course, that case is like a mule: it has neither pride of ancestry nor hope of posterity.

The Court: I just wanted to get the cases clear. I will reach a conclusion on that. Do they go into the situation where you have just excerpts from the record?

Mr. Thomas McConnell: The Statute defines that as a public record. That is the Statute we are operating under here, and our rule in the Federal Court is that

evidence comes in which is admissible under either
105 Federal Court of State Court Rules. We have no question of competency. It is merely a question of relevance.

Now, Judge Thompson proceeds on the theory that any evidence that is prejudicial has two strikes against it before you start. If it hurts the other side, then there should be some reason for keeping it out. Now, I don't understand that it makes any difference whether evidence is prejudicial or not, if the evidence is competent or admissible on the theories that are involved.

It may be prejudicial or it may not, and I take it that it is prejudicial. We think it is very prejudicial and we think it is highly relevant and we think that it proves, taken together with the prima facie case which we establish by other evidence, that these railroads were in this whole thing together and that the charges that were made were true and that Cross admits they are true by giving up his position as head of the Interstate Commerce Commission and quitting in the face of the charges.

That is the only way he could stop this investigation from going further and that is what he did, and those
106 circumstances, I think, are highly relevant and highly probative to show what was going on here. Of course, they are prejudicial. Of course, they are prejudicial, but we are not bound by any such rule as that.

Now, if this testimony was taken and these proceedings happened in the course of this conspiracy it explains several things. No. 1, we claim that free of the interference of this investigation the conspiracy would have proceeded to its natural outcome, namely, that he would have been given a job, that he would have been given a house, he would have been given other things, and that was stopped when the investigation started, right in the middle of carrying it out.

He made contracts for a house, he was about to consummate his move out here to Illinois, and then along comes the investigation and he tells people, 'Don't mention this, or say anything about the house" and he tries to back away from the house deal and other deals.

With the whole thing put together, it may not say in so many words that this man is guilty of the things charged, but conspiracies of this kind are not done
107 out on the public highway, your Honor. You have to prove them by the indications that normally show up when this sort of illegal activity is going on. We didn't put these people in the position they are in. They got in there under their own power.

They got mixed up with this fellow Cross, and it seems to me under the rules that are applicable here they are bound by what admissions he made, by his conduct, by his statements, by whatever he did in the course of this conspiracy, and one of the things he did right in the middle of the conspiracy was run away from a Senate investigation which was started down there to determine whether or not what we are saying in this lawsuit was true or false. He walked right away from it.

The Court: I will hear from both sides on this.

Mr. Freeman: If the Court please, may I try to briefly indicate what this Stasiukevich case stands for as far as our citation is concerned?

The Court: Yes.

Mr. Freeman: It involved a naturalization pro-
108 ceeding in which there was a denial of naturalization on the ground that this individual advocated overthrow of the Government, was a Communist. In support of that position there was introduced a report of the Un-American Activities Committee which had to do with and which made findings with respect to an organization of which this Defendant was a member.

Now, the report was received and here is what the Court of Appeals says with respect to that receipt—

The Court: This was a report with respect to an organization of which he was a member, is that right?

Mr. Freeman: That is right. It was the International Workers Order, and there were findings with respect to the character of that organization.

The Court: All right.

Mr. Freeman: The official report of the Legislative Committee was introduced, which characterized the International Workers Order.

"The Official Report of a Legislative or Congressional Committee is admissible in evidence in a judicial proceeding as an exception to the hearsay rule 109 where the report, within the scope of the subject matter delegated to the Committee for investigation, contains findings of fact on a matter which is at issue in the judicial proceeding", and they cite Wigmore.

"Indeed, the Court could properly take judicial notice of the report without its formal introduction in evidence but, though the Court may receive the report in evidence or may take judicial notice of its existence and contents, this does not mean that the Court must accept the findings and the report as indisputable truth. The findings are merely evidence of the facts asserted", and they cite several cases including the Harvard Law Review.

The Court: Was this a hearing before a jury?

Mr. Freeman: No. This was a naturalization hearing without a jury.

The Court: There you would have an entirely different issue from the one which is presented here, and that is, as to whether this whole report, and I went through the report here, would be prejudicial when you consider all of the other elements.

110 I am not ruling on it, but within that area there is a question in my mind of having a report of this type with the partial quotes which you have in here of testimony without the whole record. In other words, you are putting in a small part of the record.

You come down then to the area that if you can put in a small part such as this, whether you can put in this whole record where it was not a trial, but was merely interrogation primarily by the United States Senate, whether that would be admissible. I think they both fall within the same area because the report that you have here just gives excerpts from the testimony and then we have the whole report, and certainly a Court without a jury is in a much different position than the Court with a jury on the admissibility of this type of evidence.

Mr. Freeman: Putting aside for a moment the matter of excerpts that you raise, certainly the Committee's findings and conclusions as contained in this report, the Committee's recital of the fact that the investigation commenced on September 15th, which is an important 111 fact, and the Committee's conclusions with respect to Cross's resignation, the reasons for it and the fact that they agreed he had acted indiscreetly and he promptly resigned, these findings certainly should be admissible as embodied in an official report.

It is possible that we might limit our offer of this to the findings that the Committee reached in this investigation without reference to or without submitting the excerpts which are only partial excerpts of the record.

The Court: What do you say with reference to the record here?

Mr. Freeman: The transcript?

The Court: The transcript.

Mr. Thomas McConnell: Well, that transcript is largely testimony of Cross.

The Court: Do you contend that the whole thing is admissible, or that it is just admissible for the purpose of impeachment, and if it is admissible for the purpose of impeachment whether or not there should be excluded from it the fact that this was taken before a Senate Committee?

Mr. Thomas McConnell: I do not see any reason at all for excluding the fact that it was taken before
112 a Senate Committee.

The Court: All right. As to the first question your argument seems to be in the tenor, in reading the briefs, that it goes beyond the area of use for purposes of impeachment.

Mr. McConnell: Oh, yes. We are entitled to use this as part of our substantive case. These are statements which are made in — call it a quasi-judicial proceeding or what you will, they are made under the charge of conspiracy, the charge of illegally operating together with these railroads to exclude us as a competitor in a very large segment of Interstate Commerce.

That is the charge that is made, and here is what he is saying, and the conspiracy was still going on. Now, in that situation I know of no law that says you cannot use whatever the conspirator says in that situation, and one of the things you have to find out is in what context he said it. Why did he say it? Where did he say it?

We are using it to show and we are trying to prove that a conspiracy exists. He concedes that it is admissible against Cross. Now, if we prove that they are all
113 in the same conspiracy, that they are all trying to accomplish the very same thing that is being charged here by the Senate, under all the law I have ever heard of in conspiracy a statement, testimony, an admission made by one co-conspirator in the course of the conspiracy where they are denying it, trying to cover it up, and

where it is still in operation — it had not been concluded at that time — is admissible; it is competent evidence.

The Court: Let me ask this: Within that area you cite the cases here of United States vs. Trenton Potteries and Pan American Petroleum Transport versus the United States. There the Government read into the trial record at length testimony given at a Senate Committee hearing. The Supreme Court sustained the Trial Court's ruling that such testimony was admissible.

In these cases, were any of them cases where you had multiple Defendants? The Potteries case, as I understand it, had to do with the whole group. I will examine them. You don't have to read them in detail now, because I will examine all the cases we have here, but did that involve a comparable situation where you just had
114 one party to the so-called conspiracy, or did that involve an industry, the investigation? I am just —

Mr. Thomas McConnell: It involved a number of companies.

The Court: Yes, but I mean, in other words all of them were in at the hearing? Here we have one official who was before them. I just wanted to —

Mr. Freeman: You mean the Legislative hearing?

The Court: Yes.

Mr. Stevens: I think in addition, at the Legislative hearing in that case there was involved the point that the hearing showed there was a connection between the Defendants and a group of unsavory characters, and the Court describes them; they are people of questionable background.

The real objection there, which seemed to have much more force than here, was the fact that the investigation showed an association between the Defendants and people who were alleged to be part of the underworld, so there

was a very serious element of prejudice there which
115 the Court said nevertheless would not prevent the admissibility of the fact of the investigation if it was otherwise relevant and material, which it was in that case, and of course, it is here also, we contend.

Mr. Freeman: In other words, the Legislative investigation, the State Legislative investigation in Trenton Potteries, went into situations that were broader than the conspiracy action for which it was ultimately used.

The Court: Well, I just have an excerpt in the reply brief. We will check into that, but you contend that you have the right, so we have it clear, to introduce this entire record —

Mr. Thomas McConnell: Yes.

The Court: (Continuing) — as a part of your case in chief.

Mr. Thomas McConnell: That is right.

The Court: In the trial of this cause.

Mr. Thomas McConnell: Yes.

The Court: Then you further contend —

Mr. Thomas McConnell: We are not talking now about impeachment.

116 The Court: I understand. That is a part of your case in chief.

Mr. Thomas McConnell: That is right.

The Court: Once that record is certified to, and that is a copy of the record, you contend you have the right to introduce it as part of your case in chief.

Mr. Thomas McConnell: That is right.

The Court: You also contend the same in connection with the report of the Senate Committee?

Mr. Thomas McConnell: Exactly.

The Court: I think that issue is squarely joined.

Mr. Meserow: May I say a few words?

The Court: Is there anything you want to add to that?

Mr. Thomas McConnell: The only other thing is this:

On that matter this morning, that Interstate Commerce Commission matter, I do not think we made quite clear to your Honor this, that the purpose of that evidence is to show the motive that was utilized to bring the railroads around to a position where they left Parmelee and went with Keeshin.

On the one hand, here was a man who was dealing
117 with matters which involved millions of dollars and he was asking a favor which might cost an individual railroad the difference between Tweedledee and Tweedledum, as far as the cost of the operation to the railroads was concerned.

Now, that becomes very important in this case because the only defense that these gentlemen are making, in spite of the law you have heard here this morning which does not find reflection in any law books, the only defense I have ever heard in this lawsuit is that the railroads were acting solely from a motive of bettering their economic condition by getting a competitor who would give them more for their money than Parmelee was giving.

Now, if the motive was not that, if the motive of the railroads was not to get a competitor who was giving them a better deal, and the facts show that they did not get a better deal, but the motive was to curry favor or at least go along with somebody who could help or hurt them, it is vitally relevant in the case, and again I say that the fact that it may be prejudicial does not go to the
118 question of whether or not it is admissible.

The fact that Judge Thompson threatens us with long hearings about all the cases before the Interstate Commerce Commission, and tremendous discovery, does not impress me in the least because we heard that same argument on the question of the counterclaim here and we ended up—we were going to have weeks and weeks

of testimony on that question and we ended up, I think, with four days. He is not going to bore a jury with a lot of things that are not going to help his case any and a lot of dry statistics on what happened to these lawsuits, and I just do not think that for that bogeyman we should depart from the rules of evidence which have to be applied in determining whether this comes in.

Even if it it does amount to that, I do not know of any rule which keeps evidence out just because the Defendant might have to bring in other evidence to meet it.

The Court: That was not the Court's attitude at all.

Mr. Thomas McConnell: No. I am not saying it is. I am talking about the contention that is made on the
119 other side of the table.

The Court: Well, I think that area is raised in your briefs. Now, did you have something to say?

Mr. Meserow: Yes. I would like to address a few remarks to the Court with reference to the Senate Report and the findings in those proceedings. Judge Thompson made the statement that any reference to the Senate investigation would prove prejudicial to a jury.

Now, I think this Court must take judicial notice of the fact that this same Sub-Committee with Senator McClellan as Chairman have been investigating many spurious characters over the past five years, such as the Glimcos and others, and there has grown up in the minds of the American public, who will be the judges in this case, that anybody who appears before Senator McClellan's Committee is guilty of something, whether he is or isn't. There have been many Fifth Amendments taken by witnesses, and so forth and so on, and the same prejudice would appear here to a jury if it were brought out that Cross or somebody else appeared before this Committee.

Now, I am the only one in this room who appeared
120 before that Committee at these hearings as counsel for Mr. Keeshin, who was a witness. May I say, if your

Honor please, that this was my first experience before a Senate Commission and I was rather surprised and astounded at the lack of judicial characteristics of such a proceeding.

In the first place, the doors were closed. No newspapermen could appear. The witness testified under examination by the Chief Counsel and by the Chairman and other Senators. The questions were objectionable, but I had to sit there and I couldn't object on instructions of the Chairman.

The Court: I think we are all aware of that, Mr. Meserow.

Mr. Meserow: I could not cross examine anybody. Certainly the testimony and the report of the proceedings are not proper evidence.

The Court: Well, here is how I sum it up. You have two areas. Either under the law it is admissible or it is not admissible, that is, the transcript, and that is the reason I wanted to have this conference today.

I know that there are many things that are ad-
121 missible that, in my mind, at times are prejudicial, but we have Court decisions on it or it is provided for by the Rules or it is part of the Code that it should be.

Now, the area to which I am directing this, and from reading these briefs this is an important area in this case, in my mind, is on the basis of the contention of the Plaintiffs that this is admissible in their case in chief, and that is the area I have to explore and find out. Either there are decisions holding that it is admissible in the case in chief or there are not decisions.

Secondly, we then come down to the point that if there are not decisions it will be up to me to determine it on the basis of what we have here and whether that would be prejudicial.

Then the second area involves this report. They contend it is a Government document and is admissible as such, with excerpts from the testimony. Those are things which, in the first place, we have to determine by law, if there is any law. If there is not law, then they must be determined by reasoning on the basis of principle,
122 and I think with able lawyers such as we have here, we certainly are aware of what is admissible and what is not admissible in the course of an ordinary trial.

It would then be governed by the rules of evidence if there are no exceptions under the Federal Rules, so what a man has to do—I think we are aware of that before these Committees, and I do not want to preclude you, but we do have a number of other items to cover.

Mr. Meserow: Just one more minor point, and that is this: They contend that in November, 1955, when the Senate Committee conducted its hearings that this was another step in the alleged conspiracy. Now, it is our contention that the conspiracy—that is, the alleged conspiracy was over on June 13th, 1955, when the contract was awarded to Keeshin.

Now, in my brief, and I am not going to burden the Court now, the acts of the Senate Committee were not the acts of any of the Defendants, the alleged co-conspirators, none. They did nothing.

As a matter of fact, this Senate investigation, as we set out in our brief, was not started by us, but by the
123 Plaintiffs. It was instigated by them.

Mr. Freeman: Your Honor—

Mr. Thompson: I have a couple of comments, please.

Mr. Freeman: Before you do that, Judge, I believe you had an opportunity to read Mr. Meserow's memorandum.

The Court: I did.

Mr. Freeman: There are a dozen pages in which he

refers very glowingly to me, and all of the activities that I had. Now, I would just like to say, and I am not going to labor the point, that those statements are false in almost every instance, false with respect to any activity that I had in February, 1955, false wih respect to anything that he charges I did in appealing to Cross for any influence or anything else.

This is typical of Mr. Meserow and his client and—

The Court. Well, now, here—

Mr. Freeman: Just let me say this—

The Court: Let me get this straight on the record: I am not going to be trying lawyers in this cause, and if there is anybody steps off base in any area such as that I will deal with that problem.

This is litigation between the Plaintiff and Defendants and when I reach the stage in the trial of any case where I am going to be trying either counsel, I will handle that in my own way and I assure you it will be an effective way, so at no time in the handling of this case am I going to be trying counsel unless there is a genuine reason where he violated the canons of ethics or his conduct within the court room is not that which I expect of a lawyer, and then I will deal with it, so let's not involve our record here with any recriminations from one side or the other.

Mr. Freeman: I just wanted that opportunity.

The Court: All right.

Mr. Freeman: I just also would like to point out that about a year or two ago there was a similar attack against me professionally, which was tried before Judge Perry and he threw it out, after a few days.

Mr. Stevens: An attack brought by Mr. Keeshin.

Mr. Freeman: Brought by Mr. Keeshin, also.

The Court: Well, that is my way of handling a law-

suit. I am not going to be trying the lawyers at any
125 time. If occasion does come up I will deal with it
in the way I feel it is proper.

Now, was there anything more you had to say in this area, Judge Thompson?

Mr. Thompson: Yes, if the Court please. First, with respect to Mr. McConnell's supplement on the Interstate Commerce Commission matter, Mr. Freeman in the course of his presentation this morning on the question of whether or not this was an ex parte matter, this multi-million dollar interest matter of the B. & O., says that the law requires that notice be given to divers and sundry parties and that the Commission shall rule whether or not selling these securities must be submitted to bids, and so on.

Now, that being true, and I accept his statement as true, because I know he has had experience in this field, then if this matter of the B. & O. thing comes into issue and there is a challenge that this was an ex parte proceeding, which I assume there will be, then we will have to develop the facts as to whether it was or not. We will
have to develop whether or not all these notices were
126 given and whether anyone else ever came into the
proceedings so as to make is adversary or whether it continued as an ex parte proceeding and all that was left to do was to carry out the normal procedural steps.

Obviously, also, we would have to bring in all of the Commissioners to testify as to what action was taken by them in connection with this matter, whether Cross had antyhing to do with it officially and whether or not Cross undertook to influence them, and so on, and so on, and so on. The whole thing would have to be tried, which would be most distasteful and an experience which I would not want to have to go through, but I don't see how we could avoid it if the issue is ever presented.

We would have to try it out, and that would be true also

of any other Commission matters that were brought out in Court, because we couldn't let it stand with the implications that would naturally follow without a full explanation.

Now, getting back to this other, first on the question of the report of the Senate Sub-Committee, which occupies pages 28 and following in this pamphlet to which your
127 Honor referred, the report starts out with the statement that part of the report is based upon investigation outside of the Senate Hearing by investigators, and that it was reported to the Committee by these investigators that there was this personal relation of Hugh Cross to the contract negotiations, and then it goes on to recite a lot of other hearsay matter and winds up on page 30 with the statement:

> "In view of the fact that the information secured from independent sources tended to support the initial allegations but was at variance with that secured both from Mr. Cross and Mr. Keeshin, and also because the information provided by Mr. Cross was in certain respects different from that provided by Mr. Keeshin, Executive Hearings were held by the Sub-Committee . . .",

and so on.

In other words, that brings in the fact that there was all this preliminary investigation and all that hearsay stuff. Now, the report itself, I contend, is hearsay as to everybody, Cross and everybody else. I don't say it is admissible against Cross. It is not admissible against
128 Cross. It is hearsay as to everybody, because it is a statement of a conclusion that was reached by whoever drafted this report. The Committee adopted it, of course.

Now, in addition to that the Committee winds up with

its conclusion that the Sub-Committee feels Mr. Cross made a mistake and acted indiscreetly in his position as Chairman of the Interstate Commerce Commission.

In other words, it not only purports to recite some facts which might be findings of fact if they were properly stated, but also winds up with conclusions and deductions from the testimony they heard, which is the rankest sort of hearsay, so this report is not only hearsay, but it is hearsay based on hearsay.

As far as the report is concerned, it seems to me, as I previously expressed it, so obvious that it is not admissible in any court of justice that I do not want to spend any more time on it.

Now, on the question of introduction in evidence as affirmative proof in the first instance of this report
129 which, of course, consists, as a mere inspection of it shows, of statements of the special counsel as to what he had heard, of statements of Senators, of speeches of Senators, of every sort of thing that would never be allowed in any Court Room, and to bring it in through the back door by reading to a jury what no Court would ever permit to take place in a Court Room, is the grossest sort of violation of the fair administration of justice.

I cannot conceive of any such thing and I do not think they can ever find any authority that would allow the reading in the case in chief of this report with all of its vicious implications.

Now, I have not said that this report would be admissible against Cross. It would not be admissible against him. It would not be admissible against anyone. Cross could be examined, if he stated differently, by way of impeachment, and also statements made by Cross there could be read as admissions of Cross, there is not any doubt about that as far as Cross is concerned, but I am sure the Court knows of the many, many cases where

there are multiple defendants, where an admission of
130 a defendant out of a group, which involves other De-
fendants where they did not participate in the ad-
mission, they did not adopt it as their own and had no part in it, is not admissible.

An admission of an alleged co-conspirator is not admissible where it becomes a narration of past events. That is well established. It is only where it occurs during the conspiracy and in the course of the conspiracy and in furtherance of the conspiracy.

Now, nothing Cross said in this statement before the Senate Committee was in the course of the conspiracy to limit competition, if you please, to get this contract, and secondly, nothing that was said here was in furtherance of the conspiracy. That is, what he said did not further the conspiracy. It was exactly the opposite of furthering the conspiracy.

It was after the culprit had been apprehended, if you please, and he is being questioned by the police and he makes a statement. That is not admissible against any
of his co-defendants. That is so well established that
131 I do not want to burden the Court with further em-
phasis on the point.

It seems to me that if they were permitted to introduce this, no defendant could have any defense against it. There isn't just any way to do it. Now, it is not a question of evidence not being admissible because it is prejudicial. I have made no such statement.

What I say is that if evidence is competent then it can be admitted, but if it is incompetent it cannot be admitted against any of these people, they are not bound by it, and in the second place, if the introduction of the evidence is so prejudicial that it so far outweighs the probative value of the evidence that is admissible, then the authorities are pretty well settled, it seems to me, that the Court in its

discretion should deny that diversion and that distraction of the jury by not allowing it.

Now, I want to make only a summary again, that whether this hearing of the Senate Committee took place or not, the mere fact of the Senate investigation proves nothing.

It does not prove there was a conspiracy and it doesn't
132 even tend to prove it, nor does it prove there was any act of any of these defendants in furtherance of the conspiracy, so it seems to me it is clearly irrelevant to the issue as to whether there was a Senate investigation.

The limitations which I have already expressed are the only purposes for which it can be received, it seems to me, and whether you can find authority one way or the other on some of these things is not so important because some of the plainest things in the laws of evidence are not supported by authorities because nobody every advanced any such cockeyed ideas and therefore no Court was ever called upon to rule on them. No one ever offered any one of these things in evidence before.

The Court: I am going into these things in all areas, because I want the benefit of all your views on them.

Now, can we go on to the next item, or series of items. They all fall, in my mind, more or less into the same category. I am referring now to the evidence concerning

Cross's 1955 real estate transactions, that is, the home
133 in Washington and the home in Deerfield, and within that same area comes the sale of the trucks by the Carrollton Farm Supply. In other words, they all fall more or less in the same category, in my mind, of evidence.

Mr. Thompson: Well, they are all in the same category, your Honor, but they all must be separately considered.

The Court: Well, I believe that, but I mean, we can discuss all three of them at once.

Mr. Thompson: Fine.

The Court: I thought we could discuss all three of them

at once rather than breaking them down and having a separate discussion on each item.

Mr. Thompson: On this question of Cross's 1955 real estate transactions, the facts are not in dispute. The Court is in just as good a position to rule now as it ever will be, because there is no dispute with respect to any of the facts.

Cross did list his home down in Washington—of course, when he listed it is another issue, but I think the evidence shows it was listed many months if not years before
134 this and that there had been negotiations for some time about selling this home which, after the children left, was too big for them and he had the problem of traveling this distance, but that is neither here nor there. That is an issue which is not disputed.

The facts will be clear and the facts will be undisputed if they were to be received in evidence.

Now, Cross did sell his home in Maryland, which is near Washington, D.C., and he did buy a home in Deerfield. They say it is competent proof to impeach Cross's statement that he did not expect to leave the Commission when he did leave it, that he expected to serve out his term. Well, assume that is true, that it does contradict, and I think it does tend to contradict that aspect of the case: No other Defendant had any part in it, no other Defendant knew anything about these transactions so far as any evidence that has been presented showed. They were all private transactions of Cross. They involved the sale of a home which was held in the name of his two children, his son and his daughter, which was their
135 property as far as anything that has been developed so far is concerned.

Now, that property was sold and the property in Deerfield was bought and that was put in a land trust in one of the banks here in the name of these two children.

Now, the proof of all of that, pro and con, will take a lot of time on the trial. It will divert from the issues in this case. It doesn't prove that there was a conspiracy, it does not even tend to prove there was a conspiracy, and certainly—

The Court: Well, let me ask—

Mr. Thompson: (Continuing)—it is prejudicial as to every other defendant.

The Court: Let me ask you a question in that area: If it is shown in the Plaintiff's side of the case that Cross made the statements, or anything on the basis of admissible evidence, that he intended to come to Chicago to live and to work with the Keeshin Trucking Company—I believe it was Mr. Johnston who said he had heard that rumor—then as a part of the showing on that, that there was that intention in that he had denied that, isn't
136 there an area here to show that he was selling his home in Washington and that he had purchased a home, to show that that intention was correct?

Mr. Thompson: Well, I say—

The Court: I just propound that question. If that comes into the record here and on the basis of competent evidence, then shouldn't they be allowed to show that he did take steps to do that?

Mr. Thompson: Well, I say the question of whether or not—if Cross were the only defendant here, whether that would be admissible or not would be rather clear, that it might be admissions against Cross, if that became an issue as to whether or not he was coming to Chicago to go to work for Keeshin.

Of course, the evidence will not show that there was ever any agreement between him and Keeshin, but assuming that as a premise, then we have that. Now, whether or not this rumor that Mr. Gurley—he is the one who said he had heard the rumor.

The Court: Mr. Gurley, yes.

Mr. Thompson: He is the one who stated he had
137 heard the rumor that Mr. Cross was going to be associated with Keeshin. Now, whether that is competent evidence or not is very questionable.

The Court: Yes. I do not know whether—

Mr. Thompson: It is very questionable as to whether you can report a rumor, because Mr. Gurley says he paid no attention to it whatever and he never discussed it with anybody. Mr. Johnston testified that he talked with Cross about a rumor he had heard that Cross was coming to Illinois, returning to Illinois, but even Mr. Johnston made it very clear that Keeshin's name was not mentioned in the conversation.

The point I want to make and the point we do make is that none of these other defendants had any contact whatever with this matter and therefore the receipt of this evidence in the case with all these multiple defendants is going to be highly prejudicial to these defendants, not because it is competent evidence against them, but because it is evidence incompetent against them. In other words, it is not any act in furtherance of any conspiracy. It merely proves that Cross lied about something, if that should
138 be the development, and these defendants are not responsible for that.

These other defendants would be highly prejudiced not only because of the admission of evidence with which they had no connection whatever, before or after, but also because it would be a diversion. Now, the jury would have to decide. They would have a separate and independent and collateral issue to decide as to why did Cross make this puchase, and so on and so forth?

Now after they have decided it, what does that decide in connection with the conspiracy that is charged in this complaint? It seems to me it is not only highly in-

competent as to all these other defendants, but it is also prejudicial.

Now, the second category of this group that your Honor mentioned is the one that really open things to a very vicious argument which could be made. When Cross got ready to sell this property he listed it; at least he wanted to sell it, it was available for sale. Mr. and Mrs. Klein were looking for a property to buy. They had placed this matter with a real estate broker, to find them a piece of property.

They looked at many pieces of property, so they
139 say. They drove by this property and Mrs. Klein saw it. She was impressed with it and decided that was a piece of property in which she would be interested, and she inspected the property and the Crosses were in the house at the time and she talked with them about the property.

Mr. Klein, which is one of the numerous coincidences in this case which they want to blow up into a terrible thing, was an employee of the Pennsylvania Railroad. They say he was a subordinate of Mr. Capri, who was the Vice-President. He was one of hundreds of subordinates of Mr. Carpi, of course, and one of thousands of employees of the Pennsylvania Railroad. Now, Mr. Klein testified positively by their own examination that he had no idea of who Hugh Cross was, that he knew nothing about who owned this property or who was selling the property, that the whole transaction was completed before he knew anything about it, and that he paid for it in cash with his own money. So we would try that issue.

Now, they are going to use it, of course, for the very vicious and evil purpose of arguing that because the
140 Pennsylvania Railroad is one of the Defendants in this case and because Mr. Carpi is one of the Vice-Presidents of the Pennsylvania Railroad and because Mr. Klein was an employee in the department over which this

Vice-President had supervision and because Mr. Klein bought this property and paid for it in cash, therefore it must be confirmation of their suspicion that the Pennsylvania Railroad bought this property to bail Mr. Cross out of his predicament.

Well, of course, there just is not any possible basis for any such suspicion, much less proof, but we will try that whole thing out for a day or two and you will never get it out of a jury's mind, if it is admitted in evidence under these circumstances I have indicated, that the Pennsylvania Railroad did not buy the property to bail Mr. Cross out, which is so far from the truth that there just isn't any basis for even a suspicion, but imagine the argument that would be made on that score, and you can imagine it and your imagination does not have to run very far to get to it.

Now, what is the next step? Your Honor properly suggested that these things are all tied together in
141 their presentation of it, and therefore we can present them together. The Lasham Cartage Company decided to buy some trucks, which was no unusual procedure for them. They took bids. They got information from the International Harvester Company, I think the evidence shows.

They asked Hugh E. Cross, the son of Hugh Cross, of the Carrollton Farm Supply Company, which is down in Green County, Illinois, to submit bids. Hugh E. Cross submitted a bid, or the Carrollton Farm Supply Company submitted a bid, a furnish these trucks at $150 over cost for each truck, and there were thirty of them. Now, there isn't the slightest bit of evidence in this case, and all the evidence is to the contrary, that any of these defendants knew anything about this transaction. There is no evidence that any defendant knew anything about the transaction.

The Court: I believe there is a statement in Plaintiff's

brief that Keeshin had knowledge of it and talked abou
it and also arranged to—but nothing was done about it
something about a tire agency.

Mr. Thompson: That is another subject.

142 The Court: That is another subject?

Mr. Freeman: Yes. Keeshin so testified, yes.

Mr. Thompson: That is another subject.

The Court: Go ahead, Mr. Thompson.

Mr. Thompson: Absolutely nobody that is a defendan
in this case had any connection with that transaction ex
cept that they undertake to say that because Mr. Forgash
who was a long time friend of Mr. Keeshin and who wa
also an acquaintance of Mr. Cross—Forgash is the Pres
dent of United States—

Mr. Meserow: U. S. Freight.

Mr. Thompson: (Continuing)—U. S. Freight. U. S
Freight owns Lasham Cartage Company. U. S. Freigh
was in turn owned in part by—

The Court: The New York Central, 45 per cent, o
something like that.

Mr. Thompson: (Continuing)—by Linden Securities.

The Court: Oh.

Mr. Thompson: And Linden Securities was owned b
the New York Central. Therefore, it must be assume

143 that because Mr. Forgash and Mr. Keeshin wer
friends and talked over the telephone, and that b
cause Forgash talked to Cross in connection with h
business with the Interstate Commerce Commission, b
cause young Cross was the son of Hugh W. Cross, a d
fendant, because Lasham Cartage was owned by U. S
Freight and U. S. Freight in turn was part owned b
Linden Securities and Linden Securities was owned b
the New York Central, therefore the New York Centr
must have had something to do with this purchase, and
being the only defendant, they finally get back to a d
fendant.

Now, there is not a syllable of evidence to prove any such thing and there is no indication that anybody had any part in this transaction excepting the Carrollton Farm Supply Company and the Lasham Cartage Company people.

The Court: Let me ask you this: Does the record on the basis of depositions clearly show that there was an advertisement for bids? Is that what you said?

Mr. McConnell: I don't think so.

The Court: Well, you said something about bids.

Mr. Meserow: May I clarify that?

144 The Court: Yes.

Mr. Meserow: Mr. Monaco, the manager of Lasham Cartage testified at the deposition hearing that he recommended to the executives of Lasham Cartage that they buy International Harvester Company tractors rather than White or any others that were under consideration, and the executives took his recommendation and asked him to request bids.

Bids were made from the International Harvester dealer in New Work, Chicago, and the Carrollton Supply Company. The Carrollton Supply Company was the cheapest and that is why it was accepted.

Mr. Thompson: All right.

Mr. Freeman: I will tell my version of the story in a minute.

The Court: Proceed, Mr. Thompson.

Mr. Thompson: Anyway, there is no proof of any kind that there is any connection at all. Now, then, this other thing: Keeshin suggested to young Cross that he get the agency for the Springfield Tire Company and that

he get some of this State of Illinois business which he 145 thought young Cross might be able to get.

There was some horsing around about that but young Cross never got a contract from the State of Illinois and that's the end of that story.

Now, they tie all these things together. They say young Cross in April, 1955, sold thirty trucks at a $150 profit on each truck, which is $4,500, strange as it may seem, and then in July, 1955, months later, Hugh W. Cross buys the Deerfield property and makes a down payment of $4,500, so therefore this $4,500 must necessarily be the $4,500 Hugh Cross used out there with no evidence on earth to support any part of it, not even the basis for a suspicion, and yet you tie all these things together and you can make a terrible story out of it.

It will take one week to try these other collateral issues and these other defendants will be sitting there absolutely helpless, absolutely helpless, with no way on earth for them to meet any part of these three transactions.

Mr. Freeman: This is a very, very significant part of our case. There is no doubt about it.

146 First, with respect to the offer of an executive job, your recollection and Mr. Thompson's statement do not tell nearly the whole story. It will only take me a minute to indicate to you the number of people who have already testified with respect to that.

Mr. Johnston, who is President of the Illinois Central Railroad, testified in depositions and at the Senate Hearing, and he testified in depositions that whatever he said at the Senate Hearing he will stand back of, that the statements there made were correct and that he would reaffirm them, but he did testify that he had heard a rumor —he was the man that heard the rumor—in Chicago, possibly from a railroad man, he was not sure, that on April 29th, and that date is the result of the elimination of other dates, he was in Washington, D.C. attending an American Association of Railroads Presidents' Meeting and he went in to see Cross and he asked Cross whether there was any truth to the rumor that he was going to go with Keeshin in the event Keeshin got the transfer con-

tract, and Keeshin said, "Yes, if things work out satisfactorily", and there was no question about Mr. John-
147 ston's reference to—

Mr. Stevens: Cross said it.

Mr. Freeman: I mean, Cross said it to Johnston, and there was no question about Johnston's testimony, that he was referring to Mr. Keeshin's transfer company and the procurement of the transfer contract by Keeshin and that Cross would go with Keeshin in an executive capacity.

Cross made a lot of statements about what his conversation with Johnston was and Johnston categorically denied each one of them in deposition. This is Mr. Johnston.

Secondly, Mr. Gurley, President of the Santa Fe Railroad: His testimony, despite everything Mr. Thompson says, was to the effect that he heard a statement, not only rumors, but a statement in Washington and possibly from a railroadman, although he was not sure, and this testimony is on pages 2391, 2396 and 7, 2399 and 2404 of the deposition, and Mr. Gurley filed an affidavit with the Senate Committee in which he said:

"Some time prior to the awarding of the contract,
148 in the spring of 1955, I heard rumors and statements to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing the transfer contract."

Now, let me stop a minute, if I may, collaterally, in connection with Mr. Gurley's testimony. We took his deposition and we took the deposition of Mr. Duffy, who was Vice-President in charge of Traffic, and Mr. Gurley testified that on June 2nd, and the decisive meeting was June 3rd, of the Committee—on June 1st or 2nd, I am sorry, shortly before June 3rd, he called in his executive Vice-President, a man named Ryden, and he said, "Will you bring me up to date on the transfer matter?"

My Ryden went in to see the Traffic Vice-President, Duffy, and came back with a recommendation that had been made by their principal officers in the Passenger Department, Mr. Sloan and Mr. Anderson, strongly—I use the word advisedly—strongly recommending continuation with Parmelee. This recommendation had been made a week prior.

149 The memorandum also contains the statement that contracts had been made by Keeshin with the executives of the B. & O. Pennsylvania, Chicago, North Western and possibly other railroads for a favorable consideration. This was the reference to Cross's contact, and this was contained in the memorandum that Mr. Ryden brought back to Mr. Gurley.

What did Mr. Gurley do? He looked at the recommendation for Parmelee and said, "We will vote for Keeshin", and when Mr. Thompson said, "What reasons did you assign?" he said, "I don't assign reasons", and then when Mr. Ryden later testified he said Mr. Gurley did not assign reasons, but Mr. Duffy testified that Ryden came back to him and said, "Is it possible without hurting the Santa Fe Railroad to vote for Keeshin?"

That was the kind of inquiry that was made by Mr. Gurley, knowing of contacts with other railroads and knowing by statement, not only rumor, but by statement which he heard in Washington, possibly from a railroad man, that Cross had been promised a job with Keeshin if Keeshin got the contract.

150 The third President is Mr. Feucht of the North Western Railroad, and Mr. Feucht testified that on April 13th or 14th Mr. Brennan, his chief passenger man, reported that there were rumors floating around Chicago that Cross might get a job with Keeshin. Feucht said—well, he used a vulgarity and said that he didn't believe it, but it was brought to this attention.

Also, Brennan testified that he had heard Cross had made contacts with other railroads. There are memoranda to that effect. We have two memoranda, one where the New York Central, the Chairman of the Committee, called the Illinois Central member of the Committee and said to him, "I have heard that the Presidents' Officers are being"—Presidents plural—"are being contacted" and this was April 21st, after Cross had been to see Mr. Simpson in Baltimore and after he had contacted Capri and possibly the New York Central, too, as we will point out—"the Presidents' Officers are being contacted and therefore, at our next meeting on May 19th, let's have the men of the highest stature present", because there was a question of policy involved, and they did.

151 The B. & O., the Pennsylvania and the North Western brought in their top brass to attend that meeting; not the Committee members that had proceeded with this problem over a ten-year period prior, but their top people. Policy was involved.

So much for Feucht. He heard of Cross's affiliation with Keeshin in the event of a contract, and what about Keeshin? Keeshin testified in depositions and testified at the Senate Hearing and Keeshin testified that he had offered Cross a job in connection with a contemplated bid for the Chicago West Towns Railway in 1954, that he had never rescinded that offer, that he had a general understanding with Cross that if ever Cross were to leave the Government Service he could have a job with Keeshin, and that that understanding was in existence at the time of the transfer negotiations. This is a rather broad type of concession for a man to make, and this, too, is documented.

So we get to the point where there is a large volume, not a single little rumor somewhere, as Mr. Thompson would have you believe, but there is a large volume of

152 proof that Cross did contact these railroads for the purpose of procuring favorable consideration, that the railroads knew, and most of them did as we can prove in this record, knew of the contacts and knew that Cross was going to have an executive job with Keeshin.

In proof of that, if proof were further needed, is the fact that while the contract was awarded to Keeshin on June 13th Cross came to Chicago two weeks later, on June 28th, to look for a home. He decided upon it on June 30th. He executed a contract on July 11th listing, for the first time the record shows, listing his Washington home for the first time since he had lived in it, on July 11th also. He listed his Washington home, he signed a contract to buy the Deerfield home and he interlined the contract, "Possession of this house to be forgiven to the purchaser by September 15th", and September 15th is rather an important date, because Keeshin's service to the railroads was to start October 1st, and when Cross returned this contract to the seller he returned it with a letter of transmittal in which he said, "Keep this confidenial, keep my name out of it"—

The Court: That is in the brief.

153 Mr. Freeman: (Continuing)—and you know the rest of it.

So here is the matter of the house, which goes very, very much to demonstrate, or which is, I should say, a concrete demonstration of the statements that were made, denied by Gross, mind you; Gross denies that he ever had an offer of a job or ever contemplated one with Keeshin, but everything else is against that denial, including his activities.

I do not have to talk about the sale of the Deerfield house. That—

The Court: Right there I want to pose one question. All of that took place after the supposed conspiracy was

completed, after all the other elements that entered into this, isn't that correct?

Mr. Freeman: No.

The Court: That is, the sale of the house?

Mr. Freeman: No. We charge that the conspiracy continued; that the conspiracy continued until we were destroyed.

The Court: When did the sale of that house take place?

Mr. Freeman: The sale of the house took place 154 in May, 1956, by contract completed by July.

The Court: Your complaint is filed in February.

Mr. Freeman: February, 1956, but we do contend that the conspiracy was continuous.

The Court: Was it a continuing conspiracy?

Mr. Freeman: Yes.

Mr. McConnell: Oh, yes.

The Court: You have a right to bring in all the other elements, so it is your contention that you would have the right, if anything took place in the next two weeks—

Mr. Freeman: It still continues.

The Court: (Continuing)—to go into it?

Mr. Freeman: Yes.

The Court: It is a continuing conspiracy?

Mr. Freeman: Yes. This was in furtherance of the conspiracy that was ultimately there.

The Court: All right. I understand your contention. Proceed.

Mr. Freeman: Now, with respect to the Deerfield house, Cross moved into that in December, 1955. We filed our suit in February, 1956. He had previously, in November, 1955, sought to cancel his contract to purchase saying, 155 "In view of the Senate Investigation I want out and I will forfeit the $4,500", and he couldn't because of an estate problem, but he moved in in December and he listed the house for sale a month or two months after we

filed this suit, in May, 1956, and it was taken off his hands by M. E. Klein.

Now, this is a fact of life. I mean, the Pennsylvania Railroad is very much involved here. Mr. Carpi is very much involved here, as is Mr. Forgash. It isn't necessary for us to establish all of the foundational information now. There is a relevance and there is a competence to this proof.

This is what happened to the Deerfield house. It was sold on a contract executed in May, 1956, to M. E. Klein, who was an important man. He was the head of the Coal Division of the Pennsylvania Railroad. He wasn't one of thousands of employees. He was a department head.

Mind you, your Honor, a significant thing that Mr. Thompson mentions: They didn't know who Cross was.

This transaction was handled by their Assistant
156 General Solicitor, Haberkorn. Haberkorn was the Attorney on the Legal Committee during June, July and August, negotiating the contract with Keeshin. During that time, also, the Legal Committee, and in September and October, began considering the problems of the Cross Senate Investigation. They had reports about Cross's investigation. It was something of considerable moment when Cross retired.

Now Klein has the temerity to say, "I met Mr. Cross, I negotiated with him, and I didn't even know who he was." Well, I think this goes to determine whether or not any part of the story can be believed, when his own counsel and the counsel for the Pennsylvania Railroad who was supplied to him to assist him in making this purchase, when his own counsel was part and parcel of this whole problem, which was a serious problem facing the Pennsylvania Railroad at that time when Cross was being investigated.

But let me go on to the Tire matter, if I may.

The Court: Just a minute, please. We will take a short recess, gentlemen, and then resume.

157 (Whereupon a short recess was taken, after which the following further proceedings were had herein, to-wit:)

The Court: You may proceed.

Mr. Freeman: If your Honor please, let me say one further thing on this Pennsylvania business, and M. E. Klein. The record is clear that Cross visited Mr. Carpi in Philadelphia, in April. Cross called him for an appointment.

The record is further clear that Cross made six or seven toll calls to Mr. Carpi, either from his home, or when he made them from the Commission he charged the calls to his home, and the record is clear on the basis of the Finance Officer's statement, of the Interstate Commerce Commission, that when a Commissioner charges a call to his personal phone no record of that call appears on the Commission's files.

The statement is made, however, that Mr. Carpi and Mr. Cross never discussed the transfer situation; they were just discussing freight car shortages. Mr. Cross did testify that he may have talked about the transfer thing with Carpi, and that occurs, I believe, on page 791, as I remember.

158 Mr. Forgash, who is very deep in this thing, but we haven't really gotten into an argument on it, also admitted that he may have talked to Carpi about the transfer matter. The Santa Fe Railroad on May 23, 1955 by their responsible officers, said this in a memorandum to their Vice-President:

> "We understand that Mr. Keeshin has appealed to the executives of the B. & O., Pennsylvania, Chicago and North Western and possibly other lines for favorable consideration of this bid."

Mr. Keeshin testified categorically that he never made any of these appeals personally, no. The appeals were made by his representative, Cross, and there is no doubt about it, so that the Pennsylvania Railroad through Mr. Carpi exercised a very important position here.

We went into the records of these railroads and we found voluminous records in each one of the railroads—as a matter of fact, there is a format that they keep. You can go from one railroad to another and pretty nearly find the kind of information on the basis of a classification that they maintain, but in the case of
159 the Pennsylvania Railroad there is an amazing gap.

From February 1, 1955, until June 15, 1955, there isn't a single paper in the files in Philadelphia because Carpi, who is one of the largest railroad executives in the country, says that he doesn't deal with his staff on the basis of memoranda, it is all oral reports, but on June 15th there is a little memorandum from Carpi's underling saying, "I think you ought to send a note of congratulations to the Chicago man for the fine job he did in the Chicago transfer", and on June 16th Carpi does so, but no memoranda, no records from February 1 to June 15th. This is an amazing kind of situation which I think the jury likewise is entitled to know.

Let me go on from the Pennsylvania thing to the tire situation.

The Court: Yes. I do not want to rush you, but time is rushing on.

Mr. Freeman: I realize that. I will spend only a minute or two on this, because I think it is really so obvious.

The Court: Very well.

Mr. Freeman: The timing of this Kelly-Springfield
160 conversation that Keeshin had with Cross's son, the timing of this purchase of trucks that was made of Cross's son is very important.

Forgash was a very important executive in the New York Central hierarchy. He was President of the largest freight forwarding company in the world, U. S. Freight Lines, and it was a big subsidiary, a 45 per cent subsidiary of the New York Central through this Linden Securities.

The U. S. Freight Lines, or its subsidiary Lasham Cartage, which was merely an operating company, had been negotiating for International Harvester tractors, and they were negotiating in New York with the factory branch of the International Harvester Company, and that is the way it is normally done.

Big users buy their fleet use from the factory branches of the International Harvester, not from the little farm agencies, and the record is clear that in December, 1954 and in March, 1955, this was the character of negotiations that were going on.

But on April 6th Cross and Keeshin got together—161 first let me say, as the records show, that Keeshin first called Cross on March 23rd. On April 6th Keeshin called Cross with respect to a proposal that he was making to the railroads. Cross testified that he thought he had heard from Keeshin about that proposal.

On April 7th there are telephone calls from Forgash to Cross's son and Forgash in deposition admitted that those calls of U. S. Freight to Carrollton, Illinois, were made by him to Hugh Cross. I don't know whether that is Cross's son or Cross himself, but it must be Cross's son.

That telephone conversation occurred on April 7th, and on April 12th they placed their order with Cross's son in Carrollton and Carrollton is a very small town in Illinois. This boy had had a farm agency, was selling International Harvester Company farm equipment, not tractors and trailers. He did not remember ever selling

a truck or a tractor to anyone before, and this great organization in New York, one of the largest freight forwarding companies in the world, sends down to Carrollton to buy 30 tractors from a farm agency on a basis that had to assure Cross's son a profit of $150 a tractor
162 without turning a finger. He justs gets that profit automatically and he did get it. He got $4,500, which was paid to him in June, but the contract was made in April, at the time Cross started his contacts with the railroad Presidents.

Cross's first contact with a railroad President, in our view, was on April 8th with Simpson, when he went to Baltimore. He then saw Simpson again in Baltimore on April 23rd. He made his first long distance call to Simpson on April 18th, and his first long distance call to Carpi on April 18th. This was when the real conspiracy commences.

This arrangement was an arrangement that Keeshin provided for Cross in order to induce him to go out on a limb, as he did, to procure this contract for him from the railroads. There are a great many telephone conversations from U. S. Freight Lines down to Carrollton during April and May and June that must deal with this situation.

We asked Keeshin about a call that he had made on May 17th to Hugh E. Cross in Carrollton. "Oh" he said, "that had to do with my attempt to get him a tire agency." Well, he didn't succeed.

163 When I tried to get any information from Keeshin as to who he contacted at Kelly-Springfield, what were the circumstances, he had a very convenient lack of memory. Let us assume that he did not succeed, but this was another method that Keeshin used in an attempt to induce Cross to continue his work for him with the railroads, and mind you—

Mr. Meserow: That is your conclusion, now.

Mr. Freeman: That is—

Mr. Meserow: That is not in the record. That is your conclusion.

Mr. Freeman: Everything I have said is in the record.

Mr. Meserow: I think, Judge—

The Court: Well, I will examine the record.

Mr. Meserow: The record will not back up your conclusions.

The Court: I will examine the record, gentlemen.

Mr. Meserow: I am sorry. I did not mean to interrupt.

The Court: Proceed.

Mr. Freeman: Now, these thirty tractors were sold out of International Harvester's factory in Ohio, they went from Ohio to New York. they never were
164 touched by Carrollton, but the $4,500 check came to him.

It is a strange coincidence, and maybe it is only a coincidence, as Mr. Thompson says, but I think it goes beyond that and we should be given an opportunity to establish it, that when Cross bought his house in Deerfield he bought a house for thirty-eight or thirty-nine thousand two hundred dollars, but he put a deposit up of $4,500, which is a strange multiple of thirty-eight or thirty-nine thousand dollars. You put up five per cent or ten per cent with a real estate agent, but he put up forty-five, which is the exact amount that was received by his son a month prior in the tractor deal.

Now, we think that is very relevant. It is not necessary for every conspirator to know all of the circumstances of every irregular transaction. It is sufficient that in this instance two of the conspirators, Keeshin and Cross, did make arrangements for Cross to be advantaged by the executive position with Keeshin's company, by the pay-

off of $4,500, by the promise of the Kelly-Springfield
165 thing, and it is also significant that Forgash, who was an important railroad executive, participated not only in the truck deal, but also in many, many other respects.

Forgash admitted that he may have had conversations with Cross with respect to the transfer matter and let me go into this for one extra minute.

The rourt: You are going on in great detail here, Mr. Freeman.

Mr. Freeman: I shouldn't, but I—

The Court: I will examine the record here.

Mr. Freeman: All right.

The Court: Let's try to summarize it as much as we can.

Mr. Freeman: Yes. In summary, it seems very clear that the record will show the railroads did know that Cross had been promised an executive position with Keeshin and intended to go with Keeshin if he got the transfer contract. This information came to the railroads prior to the time they awarded him the contract on June 3rd.

It explains why they would award him the contract even though it was less favorable than the contract that Parmelee had offered them in writing.

166 The railroads further knew that Cross had made contacts with various railroad officials.

As a part and parcel of this undertaking Keeshin did make available to Cross's son, the same family, $4,500 in a very easy profit on the sale of thirty tractors, which was a very unusual transaction, considering that the transaction was with a New York, established company whose previous dealing had always been with the factory branch or the head of the company, down to a little farm agency in Carrollton.

Of course, the house situation tends—well, I say

"tends." It establishes beyond a doubt that Keeshin's whole purpose was that when—or rather, Cross's whole purpose was that when Keeshin got the contract he was coming to Chicago to be an executive of that Keeshin Company. He made his arrangements to come here and the Senate Investigation suspended them, because the Senate Investigation started on September 15th and the records of the house transaction show that that was when Cross too, was reluctant about going through with the house transaction and ultimately went through with it in the name of a nominee.

167 The Court: Now, what do we have left?

Mr. Thompson: If your Honor please, I just want to say, in order to expedite it, that I do not see any point in discussing the details of formalizing the transfer contract, it seems to me so obviously not part of this evidence relating to the change-over, and the details of operation, consideration of inclusion of the transfer charge and through tickets, and so forth. They don't even undertake to defend listing those things they propose to put in evidence.

The only thing I want to even mention is the evidence relating to the attendance of railroad officials at group meetings and the telephone toll slips, of course. What we say there is that none of them should be allowed to be referred to, except they have been identified with this transaction. There is a great mass of them; I don't know how high the stack is.

With respect to the matter of the attendance of these railroad officials at group meetings, they were regular meetings, held regularly. They were all officers of these different groups and they had to attend. They don't

168 even pretend to bring forward any evidence showing that the subject of this railroad transfer negotiation was ever mentioned, or was ever on the agenda or that the subject was ever discussed.

Their only defense is that they have a right to show that since these people were in a place where they could have conspired, they must have conspired. There is not any such law in this country and I hope that there never will be. That is all I have to say about that.

Mr. McConnell: All I want to say about that is, usually when you want to conspire you have to get together, and to say that we can't even get them in a meeting on your say-so that they did not conspire is a most unusual and unique argument on evidence. We can't try a conspiracy case on Mr. Thompson's say-so.

The Court: Let me ask this: I was rather interested in that in this respect: Is there anything in the depositions that indicates any meetings on the basis of the depositions that you have taken, where this came up for discussion by the officials, as a result of your discovery?

Mr. Thomas McConnell: Do you want to answer 169 that?

Mr. Freeman: Yes. I will try to answer that correctly.

The Court: Well, I do not want to tie you down, because in our discussion a number of things have gone through my mind which I will go into a little later, but I wondered if the record, as it now stands, on the basis of the depositions taken, shows or indicates that at these meetings this came up.

Mr. Freeman: You mean, that there was a discussion of the Cross matter?

The Court: Yes.

Mr. Freeman: None until November, so actually none. There was one meeting in November, 1955, either October or November, 1955, when there was a big meeting at which the Cross problem was discussed, and so on and so forth, and this was before he appeared before the Senate Committee or shortly after he appeared, but before he resigned, but the answer is that to a considerable

extent the parties said—for instance, Johnston would say, "I contacted Cross and spoke to no one about it." Gurley said, "I heard about this statement, but I didn't pass it on." In the case of the North Western there are admissions that the whole organization knew that Cross had made contact with their President and with others and that there were rumors Cross had gone beyond that and sought a job, but the answer, again, is no. There is no proof that there were meetings at which the Cross intervention was discussed.

Mr. Thompson: Not only is there no proof of that, but every President testified positively that the subject was never mentioned and never discussed.

Mr. Thomas McConnell: Well, even if that is so, as I understand what Judge Thompson is trying to do, is to get a ruling in advance that we can't even go into the question of their meetings.

Mr. Thompson: That's right.

Mr. Thomas McConnell: I understand that when we get to the trial of this case I do not have to rely just on what depositions were taken. I can put these defendants and their managing agents on the stand under the rules and cross examine them in front of the jury. I have tried conspiracy cases in this Court where I went into Court with no evidence of what happened in meetings, and after cross examination came out with a prima facie case of conspiracy. Now, I don't say that I can do it in any individual case, but at least I am entitled to the right to try.

Now, the other question is whether or not we can show formalization of a contract. I say that contract is the most cogent evidence of conspiracy I have ever seen, and certainly I can put them together.

The Court: Well, I certainly think within all of those areas that there are elements we have to consider. Is

there anything else you wanted to say?

Mr. Freeman: So that I would not be misunderstood, because I was answering your question rather restrictively—

The Court: Yes.

Mr. Freeman: (Continuing) —what Judge Thompson was referring to in the matter of meetings is not meetings at which Cross was discussed or meetings with Cross. It was meetings of various defendants for other official purposes.

172 Many of these meetings and the timing of the meetings are important in establishing when a particular conversation occurred, when they made inquiry; for instance, when Johnston made inquiry of Cross.

April 29th is very definitely the date, but it requires that we show that the American Association of Railroads met on the last Friday of every month and that Johnston was not there on March 24th and he was not there on May 27th and he was there prior to June 3rd, so he was there on April 29th and he finally said yes, it must be so, but it is that kind of problem of identifying the time when a particular conversation occurred that requires us in many instances to determine when they did meet and when they had the opportunity to pass this information on, with respect to conceded statements which they find difficult to recall as to when they occurred, or how they heard them, who they heard them from, and so on. This gives them the opportunity to refresh their recollections.

Mr. Thompson: If the mere fact that two people met together at an official meeting can be wrestled around 173 in a court room, and of course, that is admitted here, the jury has to draw the conclusion that there must be some connection or it never would have been allowed into evidence by the Court.

Now, of course, their whole argument with respect to

many of these things is a mere sequence of time ties two things together. If Cross talked to Keeshin today and Keeshin talked to Forgash today and Forgash talked to Carpi today, then they must have all been talking about the same thing, which is pure guesswork and assumption; they must all have been talking about the same thing, and therefore they must have all been in the conspiracy.

Mr. McConnell: I just want to leave this thought with you before we leave: The cases are full of it, and the Supreme Court has mentioned it time and time again, that conspiracy proof is unique. You do not have conspiracies out in the middle of the broad highway. You have got to get people together and you have to show by fact and circumstance what happened, and often times you are dealing with inferences which arise from what they did, that there must have been some sort of
174 meeting of the minds or consensus of agreement to bring about that result.

I had a case here many years ago where I had no proof at all of a conspiracy, nothing about what he is talking about, but we did have meetings and we did have inferences which were drawn from parties coming up with the same thing.

Ten years later, just by happenstance in subpoenaing in some things on another case, I found written documentary evidence of every single thing I was attempting to prove in that case, all in writing. I couldn't get it. Nobody produced it in response to any subpoenas, but the inferences were strong enough to prove to a jury that there was such a thing and there actually was.

Now, every argument that Judge Thompson makes here today was made then, that you can't infer these things; you have to have them there and you have to have a Court Reporter there taking down every word they say before you can ever prove a conspiracy. That is not the

law, it never has been the law, and if it was, you would not prove nine-tenths of the conspiracies that are alleged.

The Court: Well, here is the result of our confer-
175 ence: to me, it has been very helpful. There are certain matters I think should be gone into a little more.

I think probably the number one element is this: If you are going to file a motion for summary judgment on the contract, if that is going to be done then there may be areas here that have to be considered that you indicated at the beginning, but we will cross that hurdle when we come to it if the motion is made. As you stated this morning—

Mr. Thomas McConnell: It will be made.

The Court: (Continuing) —you contemplated making that motion within the very near future.

Mr. Thomas McConnell: Yes.

The Court: Now, if that motion is made, and the reason I bring that up is that we would first have to pass on that before I went into the various areas that we have here, and based on that premise, and I put it to you gentlemen, I would like to inquire whether or not you want me to go into the areas, and I think we should do it, where I would desire some additional information or citations of the law, but we will also consider that
176 I will extend the time for the purpose of doing it if the motion for summary judgment is made.

Now, I think the first element we do have to consider is in connection with the nature and the extent of the Interstate Commerce Commission proceedings. You made the statement at the beginning that there were only six, and all you intended to do was to refer to those matters in that they were under the control of the Interstate Commerce Commission, which is an eleven-man Commission.

Now, the thing I am thinking about since we discussed

it this morning is that we have on the face of the record certain conversations by Cross with certain officials of the different railroads who had matters that were pending before the Interstate Commerce Commission at that time, and that area is one that is limited within the scope of those proceedings, but the whole problem, and I can see the area of your argument, is that it was part of the inducement to complete this contract with Keeshin here in Chicago, but in the trial of any case of this nature
177 and of this type, we do come down, and this involves the other elements we have, to the question of how far and to what extent this should go in, if it does go in, and I can see where it possibly could be an element of inducement.

Then, however, I come up against the nature and extent of proof that the defendants would be entitled to introduce that would affect it, and I can see where we will get into another series of rounds here and that is possible in connection with a suit of this kind where you would be asking for a limitation of their proof as to what they are going to bring in and, of course, which you have to.

The factor that I think we have to analyze here, and it is addressed primarily to the defendants, is this: If I do consider this admissible, how far and to what extent and what would be the nature of what you would want to introduce in connection with it?

The next group, and in this area I think the burden rests primarily upon the plaintiff, involves the question of the admissibility of the Senate Investigating Com-
178 mittee proceedings. First, you contend that the transcript of the Senate Investigating Committee, the transcript of the hearings, after proper proof is admissible. In just a cursory examination of the authorities that have been submitted there is a question in my mind as to the admissibility of that and I would like to have

that researched rather extensively, with time for the defendants here to answer that.

Then the same applies to the report which you contend is admissible as a Government document. Now, in general proceedings there is a grave question in my mind as to whether that would be admissible, but if there are authorities then certainly I am willing to consider them. That is certainly an important element in this case.

Now, with respect to the evidence we have here, are the various depositions that have been taken on file? Have they been filed, or are they still in the possession of the respective parties?

Mr. Freeman: We have a problem there. The depositions that were taken out of town, New York, Philadelphia, and Washington, have been filed. The depo-
179 sitions that were taken of the North Western witnesses were signed and have been filed.

We have had an understanding with the other side that there would be a waiver of signatures, and as a matter of fact, when I circulated the North Western transcripts there was some question about the necessity of having them signed.

We have not proceeded to sign the railroad depositions or Keeshin's deposition or even Cross's deposition on the theory that that stipulation exists. If it does exist, and if we do have that stipulation with counsel waiving the necessity of signatures of these witnesses, we will get them all together and file them.

The Court: The reason I ask that is this: You made a number or references here and Judge Thompson made a number of references as to what was or what was not contained in the depositions that had been taken, and certainly that information, if it is available, would affect a decision on my part as to whether or not, as a part of the conspiracy, this has been shown, but on that basis I

would like, although I do not expect you to quote the
180 depostions, the parts of the depositions that may be
relevant in the consideration of that area.

Mr. Freeman: Are you talking, now, about the Interstate Commerce Commission,

The Court: No, no. I am talking now about the various transactions, for example, of the Cross family, starting with the real estate transaction, the Deerfield property and the Lasham Cartage Company.

Mr. Freeman: Yes.

The Court: Within that area I think what the record reveals is relevant to a determination as to this matter which is on the periphery of this lawsuit.

Mr. Freeman: Mr. Thompson, do we have an understanding with you waiving the necessity of signatures on these depositions?

Mr. Thompson: It has been stated several times on the record.

Mr. Freeman: Very well. Then what I propose to do is this: I would like to have that formalized, not because —I mean, I might not find these references, but we will formalize them and I will file all of the transcripts that are missing, and I know which ones they are, immediately.

181 There is one exception. Mr. Dever, who lives in Waukegan, I think should sign his, unless you waive that also. Mr. Dever is not a defendant. All of the non-defendants' have been signed and filed. The only ones that haven't been signed yet are defendant parties.

We will file all of those, and I would like to get Mr. Dever's signature, but I will go up there and get that as quickly as possible and have it notarized.

Mr. Tone: That is not necessary.

Mr. Freeman: It is not necessary?

Mr. Tone: Many of the deponents are not parties. They are employees of parties.

Mr. Freeman: But you still say it is not necessary?

Mr. Thompson: Well, we have stipulated that the depositions may be filed without signatures.

Mr. Thomas McConnell: Then that is all we need.

Mr. Thompson: It has been stated two or three times.

Mr. Freeman: I will file the exhibits. I will pre-
182 pare copies of all the exhibits that were identified at those depositions and attach them to the back sheets in one form or another and they will be filed this week so you will have a complete transcript.

The Court: Then we come down to the area of the details of formalizing the contract, all of those within this last area on which we had a general discussion here. I think from my examination that the briefs we have here adequately cover it, but I want to say this: I do not want to preclude anybody if you desire to file an additional statement on it.

I do not desire to preclude you from so doing. Then I think we come down as to the way in which this should be done. This was the Defendants' motion. I think generally throughout this whole area the Interstate Commerce Commission is the big part of yours, and then there are the others. If you want to file any additional memorandum, you may, and I think we had better cover the whole area here. You can file your supporting memorandum of your briefs here.

What I am particularly interested in, and I think
183 it is purely a legal question in my mind, is this question of the hearings before the Senate Committee. The others are additional factors. With the proceedings we have here and then with a reasonable time for you to answer and then any additional material, we should be able to conclude it. I do not want to carry it on and unduly burden anyone.

Mr. Thompson: If the Court please, we will be put in

a position, of course, of supporting the negative, in other words, negating the propriety of introducing all this evidence, and I should think that if the Plaintiff has anything to support its contention that these documents ought to be admitted, they should present their contentions first and we would answer them.

The Court: Well, I—

Mr. Thompson: I think we have said in the opening all we want to say about it. We have filed two briefs and covered it with considerable particularity.

The Court: There are areas you did not answer in the reply brief. What would you say to that? Is there any objection?

184 Mr. Thomas McConnell: There is. There is a whole section in the reply brief that we never heard of before.

The Court: That is what I say. That would then give you an opportunity to respond to that, and I think maybe that suggestion is probably better, in that I feel that the burden on this question of the hearing before the Senate Committee and that report is more on your back than on the defendants' back, and if you haven't replied to it, you may now have the opportunity. How many days do you think you would need in connection with it?

Mr. Thomas McConnell: We have already written a brief on that subject in another case. I think it is just a matter of—haven't we, Jack? Didn't we write a brief on that?

Mr. Francis McConnell: Yes, but I would just as soon as we had the time. We have several other briefs to prepare.

Mr. Thompson: If the Court please, I think Mr MrConnell will not question this: He said to the Court the first time this was called up before your Honor

185 that he contemplated filing a motion for summary judgment which would dispose of this lawsuit. That

was three months ago. I would like to see that motion for summary judgment if it is going to be filed.

Mr. Thomas McConnell: Well, I have had a few other things to do, Judge. I am in the midst of another trial.

Mr. Thompson: Well, you have been taking vacations, and so on.

Mr. Freeman: There is nothing wrong with that. I think if we had thirty days to file—we will file a motion for summary judgment promptly. We should file a brief in support of that, maybe a short time thereafter, and we will file a supplemental brief here in thirty days and Mr. Thompson can have as much time as he reasonably requires to answer that.

The Court: Then after I get those I will determine these issues and then we can go into that of the specific exhibits, because that will be a determination of some of the areas that you have on the specific documents themselves.

Are there any other questions anybody has to raise?

186 Mr. Thomas McConnell: We want to know about amendments to the complaint. We have some formal amendents, which do not amount to much, but we would like to present them and get them out of the way.

Mr. Thompson: Formal amendments to the complaint, you say?

Mr. Thomas McConnell: Yes. It is just a matter of a date to do it and advising the Court we are going to do it. It does not change the substance of anything.

Mr. Freeman: It brings it up to date and eliminates—

The Court: I have heard that before.

Mr. Thompson: Yes. I have, too. We will see what they are.

Mr. Freeman: As a matter of fact, if you will accept them here, Mr. Thompson, here are five or six copies for

your side, and I will file them with the Clerk so we get them properly filed.

The Court: Let me make this suggestion: I am continually running into this same situation. So that we have our docket clear, let them take a look at them here
187 today and then come in on a motion. Then our record will be clear on it. You are given leave to file and then at that time they can make any request they want to, and I can consider that and then we will keep the record straight on it.

Mr. Freeman: We will do that.

The Court: All right.

Mr. Freeman: Here is our motion.

Mr. Thomas McConnell: Somewhere along the line, your Honor, I think we ought to have an order concluding discovery proceedings.

The Court: Well, I think that would rightfully come after I have determined this motion.

Mr. Thomas McConnell: Yes.

The Court: Then I can consider any motion to conclude it after I have determined this area.

Mr. Moserow: Is my understanding correct, your Honor, that you intend to dispose of their summary judgment motion before you rule upon this questaion of—

The Court: If a summary judgment motion is filed. I have no motion before me. If I would determine the summary judgment motion, and if I determined it in their favor then—

188 Mr. Thompson: Then there would be an appeal.

The Court: Yes. If I determined it in your favor—

Mr. Thompson: Then they can not appeal.

Mr. Thomas McConnell: You can't appeal. You can't appeal until we get a judgment for damages.

Mr. Meserow: Is there any order being entered now?

The Court: No. You take a look at that interlocutory section.—

Mr. Thompson: I don't know. I am not so sure I am right when I say they cannot appeal.

The Court: There are some questions that are raised there that take me to 50.2 of our Practice Act. Many questions have come up under the Illinois Practice.

Mr. Thompson: Well, as I understand it, now, they will file their motion for summary judgment and brief in support, and then of course we will reply to that.

The Court: They will file within thirty days the 189 other. They may ask for an extension at that time, if you want to, and I will consider it, an extension for time to file your memorandum that we have gone over here, at the time you make your motion for summary judgment, because there is no use going over many of these areas, and I won't reach a conclusion on that until I reach it on the summary judgment, if I can keep all of this in my mind.

Thank you gentlemen for coming in.

(Which were all of the proceedings had in the above-entitled cause on the day and date aforesaid.)

190 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I Hereby Certify that the proceedings had at a pre-trial conference in the above-entitled cause in the chambers of the Hon. Edwin A. Robson, on Monday, May 11th, 1959, were reported by me in shorthand and that the foregoing transcript consisting of pages 1 to 189, inclusive,

is a true, correct and complete transcript of my original official shorthand notes so taken as aforesaid.

/s/ Claude W. Youker, Jr.
Official Reporter,
United States District Court,
Northern District of Illinois,
Eastern Division.

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IN THE UNITED STATES DISTRICT COURT
* * (Caption—No. 56 C 323) * *

MOTION FOR LEAVE TO FILE AMENDMENTS TO COMPLAINT
(Filed May 14, 1959)

Now Comes Parmelee Transportation Company, a Delaware Corporation, plaintiff herein, by its attorneys, and moves the court for leave to file amendments to complaint instanter. A copy of said amendments to complaint is attached hereto and made a part hereof.

Lee A. Freeman
Lee A. Freeman
105 S. LaSalle Street
Chicago, Illinois
Thomas C. McConnell
Thomas C. McConnell
134 South LaSalle Street
Chicago, Illinois
John Paul Stevens
John Paul Stevens
134 South LaSalle Street
Chicago, Illinois

May 14, 1959

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

AMENDMENTS TO COMPLAINT

Parmelee Transportation Company, a Delaware Corporation, Plaintiff, by its attorneys, as amendments to its Complaint filed February 16, 1956, alleges:

1. Strike from the list of defendants as contained in the title of said complaint the following:

> "Western Railroad Passenger Association, Chicago Terminal Lines, an unincorporated voluntary association"

2. Amend Paragraph 12 of said Complaint to read as follows:

> "12. There are 21 railroads (including the six (6) defendant railroads) whose lines terminate in the city of Chicago. These railroads are:

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> The Atchison, Topeka and Santa Fe Railway Company
> The Baltimore and Ohio Railway Company
> The Chesapeake and Ohio Railway Company
> Chicago and Eastern Illinois Railroad Company
> Chicago and North Western Railway Company
> Chicago, Burlington & Quincy Railroad Company
> Chicago Great Western Railway Company
> Chicago, Indianapolis and Louisville Railway Company
> Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Chicago North Shore and Milwaukee Railway
Chicago, Rock Island and Pacific Railroad Company
Chicago, South Shore and South Bend Railroad
Erie Railroad Company
Grand Trunk Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad
Minneapolis, St. Paul and Sault Ste. Marie Railroad Company
The New York Central Railroad Company
The New York, Chicago and St. Louis Railroad Company
The Pennsylvania Railroad Company
Wabash Railroad Company

667 There are three depot corporations in the city of Chicago, namely:

The Baltimore and Ohio Chicago Terminal Railroad Company
The Chicago and Western Indiana Railroad Company
The Chicago Union Station Company

(The 21 railroads terminating in Chicago and the 3 depot companies will hereinafter be referred to as 'Chicago Terminal Lines'.)"

3. Amend the first line of Paragraph 23 to read as follows:

"On or about February 9, 1951, the Chicago Terminal Lines"

4. Amend lines 9 and 10 of Paragraph 32 to read as follows:

"Johnston, Gurley and others, and through them the defendant railroads and the Chicago Terminal Lines to join"

5. Amend Paragraph 33 (d) to strike therefrom the phrase "by the Railroad Association" in the 14th and 15th lines thereof.

6. Amend Paragraph 33 (h) to read as follows:

"(h) On or about September 29, 1955 Transfer qualified to do business in Illinois."

7. Amend Paragraph 34 (f) to read as follows:

"(f) Unlawful restraints have been imposed upon plaintiff in connection with the business of transporting non-coupon holding passengers from and between railroad terminal stations, and of performing the pick-up and delivery of baggage and other services;"

668 8. Amend paragraph 34 (g) to read as follows:

"(g) The Chicago Terminal Lines and the defendant railroads in furtherance of said combination and conspiracy, have wrongfully impaired the reputation of plaintiff with the public for satisfactory passenger and baggage transfer services;"

9. Strike paragraph 34 (h) from said complaint and substitute therefor the following:

"(h) The passenger and baggage transfer business and services previously rendered by plaintiff have been destroyed and plaintiff has been forced to abandon and cease performing said business and services."

Lee A. Freeman
Lee A. Freeman
105 S. LaSalle Street
Chicago, Illinois
Thomas C. McConnell
Thomas C. McConnell
134 S. LaSalle Street
Chicago, Illinois
John Paul Stevens
John Paul Stevens
134 S. LaSalle Street
Chicago, Illinois
Attorneys for Plaintiff,
Parmelee Transportation Company

May 14, 1959

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ORDER

This Cause Coming On To Be Heard on motion of Plaintiff for leave to file Amendments to Complaint, notice having been served to all parties of record, and the court being fully advised in the premises;

It Is Ordered that leave be and is hereby given to Plaintiff to file its Amendments to Complaint instanter.

It Is Further Ordered that the defendants be and are hereby given 20 days from the date hereof in which to answer or otherwise plead.

Enter:
Edwin A. Robson
Judge

May 14, 1959

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ANSWER OF DEFENDANT RAILROAD PRESIDENTS AND CERTAIN OF DEFENDANT RAILROADS TO COMPLAINT AS AMENDED.

(Filed May 14, 1959)

Howard E. Simpson, Paul E. Feucht, Wayne A. Johnston and Fred G. Gurley, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Chicago and North Western Railway Company, Illinois Central Railroad Company and The Pennsylvania Railroad Company, defendants, by Floyd E. Thompson and Philip W. Tone, their attorneys, for answer to the complaint as amended restate the admissions, denials and averments of their answer to the original complaint, except as follows:

1. They admit the allegations of paragraph 12 of the complaint as amended.

2. Without limiting the general denial of the allegations, and each of them, of paragraph 34, they deny specifically the allegations of subparagraph (h) of para-
672 graph 34, as amended.

Floyd E. Thompson
Philip W. Tone
Attorneys for Said Defendant

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

ANSWER OF DEFENDANTS JOHN L. KEESHIN AND RAILROAD TRANSFER SERVICE, INC. TO THE AMENDMENTS TO THE COMPLAINT HEREIN.

(Filed May 25, 1959)

Now comes John L. Keeshin and Railroad Transfer Service, Inc., defendants, by their attorney, Albert J. Meserow, to answer the amendments to the complaint, heretofore filed by plaintiff herein, and for answering states as follows:

1. that these defendants hereby restate their denials, averments, and admissions of their answer, to the original complaint herein;

2. that as to the amendments to paragraphs 12, 23, 32, and 33 (d), these defendants neither admit nor deny the allegations therein contained, but demand strict proof thereof.

3. These defendants admit the allegations to the amendment to paragraph 33 (h).

674 4. These defendants deny the allegations of the amendments to paragraphs 34 (f), 34 (g), and 34 (h).

Albert J. Meserow
Albert J. Meserow
Attorney for said defendants

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In The United States District Court

* * (Caption—No. 56 C 323) * *

ANSWER OF DEFENDANT, THE NEW YORK CENTRAL RAILROAD COMPANY, TO CERTAIN AMENDMENTS TO THE COMPLAINT.

(Filed June 3, 1959)

Now comes The New York Central Railroad Company, one of the defendants, by Marvin A. Jersild and Charles I. Hopkins, Jr., its attorneys, and in answer to the amendments of May 14, 1959 to the complaint, restates and incorporates herein by reference, the admissions, denials and allegations of its answer to the original complaint, and further says:

1. It admits the allegations of amended paragraph 12.

2. This defendant restates and realleges its denial of each and every allegation of paragraph 34 and further denies each and every allegation of amended sub-paragraph (h) of paragraph 34.

Marvin A. Jersild
Charles I. Hopkins, Jr.
Marvin A. Jersild
Charles I. Hopkins, Jr.
Attorneys for Defendant,
The New York Central
Railroad Company
Suite 1236 LaSalle Street Station
Chicago 5, Illinois
WAbash 2-4200

676 State of Illinois,
County of Cook—ss.

I, Jo-Anne Zimmer, being first duly sworn, depose and say that I mailed a true and correct copy of the foregoing Answer of Defendant, The New York Central Railroad Company, to Certain Amendments to the Complaint, postage prepaid, to Messrs. Floyd E. Thompson and Albert E. Jenner, Jr. and Philip W. Tone, 135 South LaSalle Street, Chicago 3, Illinois, Messrs. Lee A. Freeman and John Paul Stevens, 105 South LaSalle Street, Chicago, Illinois, Mr. Thomas C. McConnell, 135 South LaSalle Street, Chicago 3, Illinois, Mr. Charles F. Hough, 135 South LaSalle Street, Chicago 3, Illinois and Mr. Albert J. Meserow, 231 South LaSalle Street, Chicago 4, Illinois, by depositing same, addressed as above and sealed in a regular United States mail box located in the LaSalle Street Station, Chicago, Illinois, this 3rd day of June, 1959.

Jo-Anne Zimmer

Subscribed and Sworn to before me
this 3rd day of June, 1959.
Robert G. Courtney
Notary Public
(Seal)

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In The United States District Court

* * (Caption—No. 56 C 323) * *

Comes the plaintiff by counsel and presents its motions for partial summary judgment and it is

Ordered that leave be and hereby is given to the plaintiff to file said motion instanter and to the defendants to file instanter opposition thereto, and said motion of the plaintiff for partial summary judgment is entered and is hereby taken under advisement by the Court on the briefs

of counsel, supporting brief to be filed within 30 days herefrom, answering brief within 30 days thereafter and reply brief within 20 days thereafter, and it is

Further Ordered that the time for the plaintiff to file a supplemental brief be and it hereby is extended 30 days herefrom and that reply thereto be filed within 30 days thereafter.

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MOTION FOR PARTIAL SUMMARY JUDGMENT
(Filed June 10, 1959)

Now comes plaintiff, Parmelee Transportation Company, by Thomas C. McConnell, Lee A. Freeman and John P. Stevens, its attorneys of record herein, and moves the Court for the entry of a summary judgment interlocutory in character on the issue of liability by reason of a five-year contract illegal under the Federal Antitrust Laws, and, in support of said motion, says:

1. That the Federal Rules of Civil Procedure provide by Rule 56(c) thereof that, "A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

2. That it is alleged in the complaint herein, and not denied by any answer thereto, that "There are eight
679 railroad stations in the City of Chicago at which persons board or disembark from trains engaged in interstate passenger transportation. The connecting railroads involved in such interstate trips through Chicago in most instances do not operate into the same terminal station in said city. A large number of the persons making interstate railroad trips which carry them through

Chicago must disembark from a train at one of said eight railroad stations and travel to another station some two blocks to two miles distant in order to board another train. The transportation and transfer of such passengers and their baggage from and between railroad stations in Chicago is hereinafter referred to as 'station transfer service'." (Paragraph 14 of the complaint and answers thereto)

3. That it is alleged in the complaint herein, and not denied by any answer thereto, that "In addition, each day large numbers of persons making interstate railroad trips arrange for the pick up of their trunks and other baggage at points within the Chicago metropolitan area for transport to outgoing railroad stations where they are checked through to destinations; and conversely a large number of such persons arrange for the delivery of such trunks and other baggage after interstate railroad trips, from incoming railroad stations to points of 680 destination within the Chicago metropolitan area. These services will hereinafter be referred to as 'pick-up and delivery service'." (Paragraph 15 of the complaint and answers thereto)

4. That it is alleged in the complaint herein, and not denied by any answer thereto, that "The business of transporting such passengers and their baggage from and between stations in Chicago and of providing pick-up and delivery service is part of the trade or commerce among the several states protected by §§ 1 and 2 of the Sherman Act." (Paragraph 16 of the complaint and the answers thereto)

5. That it is alleged in the complaint herein, and not denied by any answer thereto, that "A passenger making an interstate railroad trip through Chicago customarily contracts with one railroad for a single joint fare to cover the entire trip, including the cost of transporting the

passenger and his baggage in Chicago from the incoming train to the outgoing train. Railroad tickets issued for such trips through Chicago include transfer coupons for station transfer service. For over one hundred years the defendant railroads and their predecessors have paid other persons to perform this station transfer service for them." (Paragraph 17 of the complaint and the answers thereto)

681 6. That it is alleged in the complaint herein, and not denied by any answer thereto, that "Prior to June 1, 1955, any person willing and able to perform this station transfer service was free to negotiate with the railroads for this business, and the railroads were free to contract with the person or persons who offered to provide satisfactory station transfer service at the lowest cost." (Paragraph 18 of the complaint and the answers thereto)

7. That it is alleged in the complaint herein, and not in any material respect denied by any answer thereto, that "Extensive station transfer and pick-up and delivery services were operated by plaintiff in Chicago. Such services were originally established by Frank Parmelee in 1853. Prior to September 30, 1955, each of the Chicago Terminal Lines engaged plaintiff or its predecessors and others to perform station transfer services. In an effort at all times to provide adequate service at the lowest cost, and thus to offer the railroads and the traveling public a better bargain than its competitors or potential competitors could offer, the plaintiff and its predecessors designed and acquired special vehicles, buildings and other facilities, built special structures at depots, hired and trained personnel in specialized skills, and from time to time invested substantial sums of money in order to

682 maintain and improve the character of plaintiff's operations, all for the purpose of meeting the special

requirements of the Chicago Terminal Lines, including the defendant railroads, and of the traveling public. Throughout this period of over 100 years, the plaintiff and its predecessors engaged in this business, and provided the railroads and the traveling public with dependable service. Plaintiff is ready, willing and able, and has offered to continue to engage in the station transfer and pick-up and delivery business on terms and conditions favorable to the railroads and to the traveling public, * * *." (Paragraph 20 of the complaint and the answers thereto)

8. That it is alleged in the complaint herein, and not denied by any answer thereto, that "On or about September 15, 1955, acting for and on behalf of the Chicago Terminal Lines, Earl B. Padrick, as their agent, executed a contract dated as of October 1, 1955, granting Transfer [Railroad Transfer Service, Inc.] the exclusive privilege of transporting passengers and baggage between stations and of performing the pick-up and delivery service in Chicago for a fixed term ending September 30, 1960 * * *." (Paragraph 33 (f) of the complaint and the answers thereto)

9. That a true and correct copy of the aforementioned exclusive contract, executed on September 15, 1955,
683 dated as of October 1, 1955, with Railroad Transfer Service, Inc., is attached hereto as Exhibit A and made a part of this motion.

10. That by said agreement of September 15, 1955, the Chicago Terminal Lines, including defendant railroads, agreed that it was their collective purpose and intention to the maximum extent possible to limit the entire field of passenger and baggage transportation between railroad terminal stations and between railroad terminal stations and steamer docks in Chicago exclusively to Transfer, and to act in concert to recommend and refer all their passengers and prospective passengers to Transfer, as the sole

and exclusive baggage transport service which could be relied upon for prompt, safe, satisfactory and economical baggage transfer service in the Chicago terminal area.

11. That it appears from the terms of the aforementioned contract that a substantial segment of interstate commerce has been monopolized, and that the plaintiff company, as a competitor, has been excluded from competing for said transfer business by virtue of the restraints imposed upon plaintiff's competition by the aforesaid agreement, and that, therefore, said agreement is illegal under the applicable sections as pleaded in the plaintiff's complaint.

684 12. That under Paragraph (D) of the prayer for relief in plaintiff's complaint, the following relief is requested: that "Said contract entered into on September 15, 1955 be declared to be illegal and of no force and effect;" that for the reasons set forth in this motion and on the admitted facts disclosed herein, plaintiff is entitled to a summary judgment declaring, pursuant to such prayer for relief, that the aforesaid contract and agreement is "illegal and of no force and effect."

Thomas C. McConnell
Lee A. Freeman
John P. Stevens
Attorneys for Plaintiff
Parmelee Transportation Company

Dated: June 10, 1959

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

OPPOSITION TO PLAINTIFF'S MOTIONS OF JUNE 10, 1959

(Filed June 10, 1959)

May It Please The Court:

Defendants, Howard E. Simpson, Paul E. Feucht, Wayne A. Johnston, Fred G. Gurley, The Atchison, Topeka and Santa Fe Railway Company, Baltimore and Ohio Railroad Company, Chicago and Northwestern Railway Company, Illinois Central Railroad and The Pennsylvania Railroad Company, oppose the motions of plaintiff for fixing extended times for filing briefs in support of its motion for summary judgment and any supplement of its brief in opposition to defendants' motion to exclude certain categories of evidence, and in support of their opposition say:

1. This case has been at issue since October, 1956.

707 The motion for partial summary judgment is based on the answers of defendants and could have been filed two and one-half years ago as well as at this late date. At the time of the progress call on December 15, 1958, plaintiff's attorneys announced that they proposed to file a motion for partial summary judgment. On March 18, 1959, when defendants moved that this case be set for pre-trial conference, plaintiff's attorneys again announced that they proposed to file a motion for partial summary judgment. On May 11, 1959, when the pretrial conference concluded, plaintiff's attorneys announced that the motion for partial summary judgment would be filed promptly and they were given 30 days in which to file a supporting brief. Plaintiff's attorneys offer no justification for the unconscionable delay in filing the motion for partial summary judgment and a supporting brief.

2. At the conclusion of the pre-trial conference, plaintiff's attorneys were granted 30 days to file a supplemental brief in opposition to defendants' motion to exclude certain categories of evidence. Without excusing the failure to file a supplemental brief in the alloted time and without justifying the enlargement of time requested, plaintiff's attorneys now ask to have the time for filing this supplemental brief enlarged to August 3, 1959, and give no assurance that this date will be respected any more than earlier fixed dates. Granting this extraordinary enlargement of
708 time will necessarily delay the disposition of the pending motions of defendants and consequently the preparation for trial of this case.

3. The Chicago Transfer contract, the validity of which is challenged by this suit, is for the period October 1, 1955, through September 30, 1960. It is vital to the interests of defendants that this suit be tried and the issues determined before April 1, 1960, so that the defendant railroads will have ample opportunity to negotiate a contract for the continuation of the transfer services well in advance of the time of the termination of the present contract. Plaintiff's course of conduct for the past six months has been calculated to delay the disposition of matters preliminary to trial and consequently the setting of an earlier trial date.

WHEREFORE, defendants move that all matters preliminary to trial and all briefs respecting such matters be presented so that disposition can be made of all pre-trial motions at the opening of court in September, 1959, and that this case be set for trial at the earliest convenience of the Court in late 1959 or early 1960.

/s/ Floyd E. Thompson
/s/ Philip W. Tone
Attorneys for Defendants.

Thompson, Raymond, Mayer,
Jenner & Bloomstein
135 South La Salle Street
Chicago 3, Illinois
RA 6-0220

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

AFFIDAVIT OF E. B. PADRICK FILED BY DEFENDANT RAILROADS AND RAILROAD PRESIDENTS IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

(Filed June 30, 1959)

Floyd E. Thompson
Philip W. Tone,
Attorneys for defendant
Railroad Presidents and
Certain defendant Railroads.

Thompson, Raymond, Mayer,
Jenner & Bloomstein
135 South LaSalle Street
Chicago 3, Illinois

Marvin A. Jersild
Charles I. Hopkins, Jr.,
Attorneys for defendant
New York Central Railroad
Company.

CERTIFICATE

Philip W. Tone certifies that he has served by first class mail on each of the attorneys of record for plaintiff and for the other defendants a copy of the Affidavit of E. B. Padrick, this 30th day of June, 1959.

Philip W. Tone,
Philip W. Tone,

One of the attorneys for defendant
Railroad Presidents and Certain
defendant Railroads.

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

AFFIDAVIT OF E. B. PADRICK

State of Illinois }
Cook County } ss.

E. B. Padrick, being first duly sworn, on oath states:

1. Affiant is Chairman of the Trans-Continental and Western Passenger Associations, with offices located in the Union Station Building at 516 West Jackson Boulevard, Chicago 6, Illinois. These associations include all of the Class I railroads operating passenger service in the 24 Western states. A Class I railroad is one having $3,000,000 gross annual operating revenues. He is also Chairman of several additional allied bureaus and agencies, such as the Rail Travel Promotion Agency, Rail Travel Credit Agency, General Folder Distributing Agency, Western Railroads Military Bureau. He has also acted as Chairman of the Chicago Terminal Lines Committee during this period. His railroad experience started July 15, 1920, in the Passenger Department of the Union Pacific Railroad in Omaha, Nebraska, and he held various positions in that department with that railroad until July 15, 1937, at which time he accepted the position of Chief of Tariff Bureau of the Western Passenger Association, which position he held
711 until July 1, 1938, being then promoted to the position of Assistant to the Chairman. On June 1, 1944, he was elected Vice Chairman, and on July 15, 1948, he was elected Chairman. Affiant is thoroughly familiar with the through railroad passenger transportation service carried

on through the Chicago junction point by the 21 railroads having passenger terminals in the Loop area of Chicago. Affiant is also familiar with the nature and characteristics of passenger transportation by railroads in the United States. The matters stated in this affidavit were true during 1955 and prior thereto and are also true today, unless the context indicates otherwise. A part of his duties for more than the past 10 years has been supervising the arrangements for the transfer of passengers and their baggage between railway stations in Chicago, and he is familiar with the problems involved in it.

2. The subject 21 railroads operate passenger transportation service to and from more than 50,000 points in the United States, either over their own lines or via connecting carriers. These 21 railroads (hereinafter "the railroads") use eight terminals located in or closely adjacent to the Loop area of Chicago. The railroads and the terminals used by each are:

DEARBORN STATION (Dearborn and Polk Streets)
The Atchison, Topeka and Santa Fe Railway Company
Chicago & Eastern Illinois Railroad Company
Chicago and Western Indiana Railroad Company
Erie Railroad Company
Grand Trunk Western Railroad Company
Monon Railroad
Wabash Railroad Company

GRAND CENTRAL STATION (Harrison and Wells Streets)
The Baltimore & Ohio Railroad Company
The Chesapeake and Ohio Railway Company
Minneapolis, St. Paul & Sault Ste Marie Railroad Company

712 UNION STATION (Canal and Adams Streets)
Chicago, Burlington & Quincy Railroad Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Gulf, Mobile and Ohio Railroad Company
The Pennsylvania Railroad Company
CENTRAL STATION (Michigan Avenue at Eleventh Place)
Illinois Central Railroad Company
The New York Central Railroad Company
LA SALLE STREET STATION (La Salle and Van Buren Streets)
Chicago, Rock Island and Pacific Railroad Company
The New York Central Railroad Company
The New York, Chicago and St. Louis Railroad Company
C&NW PASSENGER TERMINAL (Madison, Canal and Clinton Streets)
Chicago and North Western Railway Company
NORTH SHORE STATION (South Wabash Avenue)
Chicago North Shore & Milwaukee Railway
SOUTH SHORE STATION (Randolph Street and Michigan Avenue)
Chicago South Shore and South Bend Railroad

3. All regularly scheduled trains of said railroads terminate in Chicago and none passes through Chicago. It is therefore necessary that passengers whose rail journeys begin and end at points outside of Chicago transfer from one train to another in Chicago.

4. Many of these through passengers (herein "transfer passengers") move through Chicago from incoming to outgoing carriers having different station terminals. In 1955 approximately 3,900 transfer passengers a day passed through Chicago. Approximately 99% of these were traveling between origin and destination points located in different states. Because of the location of the eight Chicago passenger terminals, the only practical method of providing for the transfer of these passengers from the
713 arriving terminal to the departing terminal is by means of motor vehicle, equipped to carry such pas-

sengers and their accompanying hand baggage simultaneously.

5. Each transfer passenger is issued a railroad ticket composed of a series of coupons, purchased at the passenger's point of origin and covering his complete transportation to his destination, including a transfer coupon entitling the passenger to transfer between stations. The passenger makes a single payment to the origin carrier for this ticket. No charge is made for the transfer coupon, except in the area less than 82 miles from Chicago, the transfer cost being absorbed by the outgoing railroad which pays the transfer agent for the service in accordance with transfer coupons collected by the agent or marked to indicate that baggage has been checked through.

6. Transfer passengers are permitted to check through their baggage from the point of origin to the point of destination. The transfer of this baggage between stations in Chicago has always been performed by the transfer agent as part of the service rendered by the agent to the Chicago terminal lines. This checked baggage has always been transferred in motor trucks separate from the vehicles in which the passengers and their hand baggage are transferred. The transfer agent is entitled to collect on the transfer coupon whether it transfers only the passenger, only his baggage, or both passenger and baggage. When baggage is accepted for checking through, the initial carrier stamps the transfer coupon with an appropriate abbreviation or punches that coupon to indicate the fact that baggage has been checked through. When the transfer coupon has been appropriately stamped or punched to indicate that baggage has been checked through and the passenger does not utilize the transfer service and
714 therefore does not surrender the coupon to the transfer agent, the outgoing railroad takes the coupon from the passenger and periodically reports to the transfer

agent the number of coupons so received by it and pays them.

7. Transportation for a through passenger is sold over routes designated by the ticket, the routing being chosen by the passenger from among available alternatives. Normally, the through passenger desires to accomplish his journey with the time between incoming and outgoing trains in Chicago reduced to a minimum, and through transportation is usually designed to route the transfer passenger from Chicago to his destination via the first train scheduled to depart from Chicago after his incoming train is scheduled to arrive. Moreover, in many instances, the passenger must transfer at one or more other junction points after leaving Chicago, and these subsequent transfers are also calculated to delay the transfer passenger for the minimum amount of time at the subsequent junction point.

8. For many years prior to October 1, 1955, the transfer of transfer passengers and their baggage between stations in Chicago was performed by Parmelee Transportation Company, plaintiff in this action, pursuant to exclusive arrangements made with Parmelee by the railroads acting in concert. All transfer of passengers and their baggage was performed by Parmelee pursuant to these arrangements, except for certain movements of special groups traveling at specially reduced fares.

9. In addition to the transfer of through passengers and their hand baggage in passenger motor vehicles, Parmelee also performed the following services for the railroads: (a) transfer of checked baggage between stations by truck; (b) transfer of corpses between stations; (c) transfer of invalids; (d) delivery of time tables to
715 hotels, etc.; and newspaper shipments; and (e) transport passengers from stations to downtown hotels.

10. In addition Parmelee performed the service of pick-

ing up and delivering from the homes of travelers in the Chicago area to designated railroad stations trunks and baggage to be shipped or checked through by rail, and also the service of delivering to the homes of Chicago travelers baggage arriving with them, pursuant to separate contracts with each passenger, and transported passengers between stations for cash fares.

11. The arrangements between Parmelee and the railroads, acting in concert, were contracts, partly oral and partly written, to which Parmelee, and all the railroads (with the exception of the Nickel Plate, which entered into a separate written contract with Parmelee having substantially the same terms as the contract with the other railroads) were parties. The terms of these contracts and the amendments thereto were negotiated, fixed and determined at joint meetings attended by representatives of all the railroads and representatives of Parmelee, and by communications between a representative of all the railroads, usually affiant, and a representative of Parmelee. Throughout this period Parmelee dealt with and contracted with all of the 21 Chicago terminal railroads as a group, acting in concert, and Parmelee's contract was exclusive.

12. In 1954 the terminal railroads determined to ascertain whether there were other persons or firms who were willing to perform the service which had theretofore been performed exclusively by Parmelee. Through a committee, consisting of the six railroads who are defendants in this action, the terminal lines communicated with various 716 firms with a view to interesting them in performing the transfer service. The committee's negotiations with these various firms resulted in the receipt of proposals from John L. Keeshin and Willett Motor Coach Company. A proposal was then obtained from Parmelee, in which Parmelee proposed that the railroads enter into an exclusive contract with it for a period of 6½ years. After

negotiations between the committee and the three bidders, respectively, and finally between the Committee and Parmelee and Keeshin, respectively, Keeshin was awarded the contract for a five year period in a meeting of representatives of all the terminal lines on June 13, 1955. A formal written contract was executed between the lines and Railroad Transfer Service, Inc., a corporation organized by Keeshin, and the service commenced under this contract on October 1, 1955, and continues.

13. The service performed by Railroad Transfer Service, Inc., is substantially the same as the service performed by Parmelee, except that Railroad Transfer does not carry passengers between stations for cash fares and does not transport passengers from stations to downtown hotels, and except that Railroad Transfer's equipment and service are superior to Parmelee's.

14. In order to provide a satisfactory through service for transfer passengers, the railroads are required to make arrangements which will assure the movement of transfer passengers between Chicago stations without delay. If the transfer service provided by the railroads is not available to the passenger immediately upon his disembarking from an incoming train, the passenger is subjected to the inconvenience of either waiting until such service is available or to the inconvenience and expense of having to
717 arrange for his own transportation. A transfer passenger who misses his connecting train by reason of inadequate transfer service is required to maintain himself in Chicago until the time the next available outgoing train departs.

15. At many times, and especially during inclement weather, there are an insufficient number of taxicabs available at a station to promptly and adequately transfer passengers from that station to another station.

16. The time available for the transfer of passengers

and baggage between stations in Chicago is limited by the time interval between the scheduled or actual arrival time of the incoming train on which the transfer passenger arrives and the scheduled or actual departure time of the outgoing train on which that passenger departs in the continuation of his through transportation. In many instances this time interval is so short that a delay of a few minutes in the departure of the transfer vehicle from the arriving station or enroute to the designated departure station or in the unloading of the passengers and their hand baggage at the departure station could cause the transfer passengers or their hand baggage to miss the outgoing train on which they were scheduled to depart. If the transfer passenger were unable to depart on the scheduled outgoing train, he would be required to wait until the next available outgoing train, either over the same or another terminal line and would thereby be seriously inconvenienced. The delay would often disrupt the schedule of connections at various points between Chicago and the passenger's ultimate destination, and it would often render it impossible for the passenger to obtain the desired type of railroad car accommodations, which are often reserved in advance, which accommodations might not be avail-
718 able on the later outbound train which the passenger would be required to take. Such a delay would often seriously interfere with the purpose of the passenger's journey, by causing loss or interference with a business opportunity, by causing the passenger to miss business appointments, an opportunity to see friends and relatives or resulting in other similar consequences.

17. The railroad's through transportation is competitive in many instances with other forms of transportation, and unsatisfactory transfer facilities between stations would result in a loss of good will toward the railroads and could result in the diversion of its passenger traffic to other forms of transportation.

18. The maintenance of prompt and effective transfer service is necessary to permit the railroads to operate efficiently. The car make-up of inbound and outbound trains is planned to accommodate the normal volume of traffic moving by each train which the railroads' experience has taught them to anticipate. In the absence of a regular and reliable transfer service bringing passengers from connecting trains, the outgoing railroad would be unable to accurately predict the necessary car make-up of outbound trains, would incur the expense of operating equipment on scheduled trains for which anticipated passengers were not available, and would be unable to assure adequate equipment to take care of passengers who had missed their scheduled connections by reason of inefficient transfer service. In addition, the railroads would be put to the expense, through the necessary rerouting of passengers, of rewriting tickets and arranging for accommodations on the later train substituted for the originally scheduled outgoing train.

19. It is therefore necessary for the railroads to provide a transfer service seven days a week maintained
719 in accordance with the incoming and outgoing train time schedules during the 24 hours a day time schedule.

20. The transfer agent employed by the railroads is required to meet all trains with sufficient vehicles to insure the prompt and efficient transfer of transfer passengers from that train to the connecting outgoing trains. The agent has always maintained a booth or desk in each station and personnel whose duty it is to guide passengers disembarking from incoming trains to the transfer vehicles by which they will be transferred to the outgoing station. This service minimizes the loss of time and confusion which would be present with passengers unfamiliar with the Chicago stations.

21. The aforesaid considerations make it highly de-

sirable to the railroads and their passengers, if not absolutely essential for efficient service, that one transfer agent perform the transfer service for all railroads. The exclusive arrangement now in effect has been employed for about 100 years and no other arrangement has been deemed practicable for the Chicago terminal lines or the transfer agent or the passengers. Any other arrangement would result in confusion and delay.

720 *E. B. Padrick*
E. B. Padrick

Subscribed and sworn to before me by the said E. B. Padrick this 25th day of June, 1959.

F. J. Stanton
Notary Public, Cook County, Illinois
My Commission expires Jan. 27, 1962

(SEAL)

721

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

AFFIDAVITS IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

(Filed August 12, 1959)

State of Illinois }
County of Cook } ss.

Edward Bayr, being first duly sworn, upon oath deposes and says as follows:

1. Affiant is General Manager of Railroad Transfer Service, Inc.

2. There are six railroad stations used by defendant terminal railroads in Chicago, Illinois and are known respectively as the Illinois Central Station, the Polk Street Station, the New York Central Station, the Grand Central Station, the Union Station and the Northwestern Station.

3. At all of the stations, except the Illinois Central and Polk Street, the parking facilities for the vehicles used by Railroad Transfer Service in the performance of its transfer operation for said terminal railroads are located upon the private property of the respective owners of said stations in locations convenient for passengers and where they may be readily seen. The respective parking facilities used by Railroad Transfer Service are at the same sites as those used by Parmelee Transportation prior to the time Railroad Transfer Service began the transfer operations in question. The areas so used are specially designed for the use of said transfer vehicles, limited
722 in size, and will accommodate the following number of the vehicles of Railroad Transfer Service:

(a) Northwestern Station—6 vehicles.
(b) Union Station—10 vehicles.
(c) Grand Central Station—6 vehicles.
(d) New York Central Station—6 vehicles.

In order to conduct an efficient operation and meet the demands for the transfer of passengers at various times each day when the number of passengers is large, the special areas at each of said stations are occupied to capacity by the vehicles of Railroad Transfer Service and when one of its vehicles is loaded and is driven away another of its vehicles which has been kept waiting on the public street near the station is then driven immediately into the loading area to occupy the space of the vehicle that has departed, thus again resulting in the loaded area being occupied to capacity.

4. The loading area for passengers transferred by Railroad Transfer Service to and from the Illinois Central is opposite the main station doors and is likewise conveniently located for passengers who are able to readily find said vehicles upon leaving the station. The site is near the

main door of the station and is located upon land in the possession of the Illinois Central Railroad. Such site has a capacity for six of the vehicles of Railroad Transfer Service and was used by Parmelee Transportation
723 Company prior to the time Railroad Transfer Service began the transfer operation in question. The loading area has a capacity for six of the vehicles of Railroad Transfer Service and the same procedure is followed when the number of passengers is large with regard to vehicles being driven from the street where they have been waiting as described in Par. 5 hereof and for the same reasons.

5. The loading area for passengers transferred by Railroad Transfer Service to and from the Polk Street Station is in a public street known as Plymouth Court and is opposite the east doors of said station in the same site used by Parmelee Transportation Company prior to the time Railroad Transfer Service began the transfer operation in question. It is likewise conveniently located for passengers leaving said station.

6. Railroad Transfer Service employs women known as stewardesses and men known as passenger agents who wear uniforms when on duty. It maintains booths in each of said stations at which the stewardesses and passenger agents discharge their duties. The booths are located where they may be readily seen by passengers leaving trains. The procedure followed by a passenger leaving a train and desiring to be transferred to another station by Railroad Transfer Service's operation is to present his railroad ticket to the uniformed stewardess or passenger agent who detaches and keeps the coupon which entitled the passenger to the transfer service. The stewardess
724 or passenger agent gives the passenger a new coupon or ticket and directs the passenger where to go to find Railroad Transfer Service's vehicle. The passenger then goes to the area in the station where said vehicles

are located as previously described, gives the coupon or ticket to the driver and is then driven to the other station.

7. The railroad coupon which is detached by the stewardess or passenger agent does not carry the name of the station to which the passenger is to be transferred nor does it give the time of departure of the train which will bring him to his destination. Consequently, most passengers who are strangers in Chicago do not know the name of the station or its location or the approximate time required to travel between stations and many do not know or forget or become confused as to the time of departure of the trains which will take them to their destinations without such information which is given them by the stewardesses or passenger agents of Railroad Transfer Service.

8. Railroad Transfer Service began the transfer of passengers under its contract with the terminal railroads on October 1, 1955. Beginning at that time and continuing to on or about September 1, 1956, Parmelee Transportation Company continued to send the same or similar vehicles to the aforesaid six stations as it did previously when
725 it performed the transfer operation for the terminal railroads. It caused the vehicles to be parked in streets near the stations and caused its drivers or passenger agents to enter the stations. They wore uniforms of the same or similar kind as they had worn when Parmelee Transportation Company had performed the transfer operation for the terminal railroads. Thus passengers coming out of the train sheds would frequently be confronted at the same time with the drivers or agents of Parmelee Transportation Company and the stewardesses and passenger agents of Railroad Transfer Service, all wearing uniforms and all soliciting the passengers to transfer them to the stations where they were to board the trains for their destinations. In the course of his duties as General Manager of Railroad Transfer Service, affiant went to the

six stations upon numerous occasions during the period from October 1, 1955 to on or about September 1, 1956 and saw and heard the drivers or agents of Parmelee Transportation Company accost passengers in the stations when coming out of the train sheds and saw and heard numerous arguments in the stations between said employees of Parmelee Transportation Company and the stewardesses or passenger agents of Railroad Transfer Service in the presence of the passengers as to which would transfer them to the respective stations to which they were to go. These arguments were frequently carried on by employees of Parmelee Transportation
726 Company in loud tones of voice and caused the passengers to become confused and would interrupt or make it difficult for the stewardesses or passenger agents of Railroad Transfer Service to detach the transfer coupons from the tickets of the passengers, arrange for the transfer of their baggage and give them necessary information such as when their trains were to depart.

/s/ Edward D. Bayr

Subscribed and sworn to
before me this 11th day
of August, 1959.

A. Kazanow
Notary Public
(SEAL)

727

State of Illinois }
County of Cook } ss.

Aaron Kazanow, being first duly sworn, upon oath deposes and says as follows:

1. Affiant has been the treasurer of Railroad Transfer Service, Inc. since it was incorporated.

2. Prior to the time defendant J. L. Keeshin made an offer to defendant terminal railroads which resulted in the contract in question between J. L. Keeshin and the terminal railroads, affiant made a survey for J. L. Keeshin in order to equip him to make the offer which resulted in said contract.

3. As a result of said survey, affiant reached the following conclusions which he submitted to J. L. Keeshin:

(a) The cost of leasing a suitable radio dispatch system was less expensive and more satisfactory than to purchase it but the minimum period for which a suitable lease could be made was for a period of five years.

(b) A garage building would be needed for the storage and maintenance of the vehicles to be used in the transfer operation which would be reasonably close to the area in which the five railroad stations were located but no adequate building with such a location could be leased for less than a term of five years.

728 (c) The useful life of the vehicles required to transfer passengers would be approximately thirty months.

(d) The useful life of the tractors required to have trailers for the baggage of passengers would be approximately five years.

(e) The contract with the union representing the drivers of the vehicles used in the transfer operation would be for a minimum term of three years.

(f) In order to obtain a reasonable insurance premium rate covering the equipment and its operation, the insurance contracts would have to be for a minimum term of five years.

(g) The cost of all equipment needed in order to operate said transfer service would be somewhat in excess of $300,000.

4. The foregoing conclusions reached by affiant have been found to be well founded. The cost of all equipment required for Railroad Transfer Service to go into business and carry on said operation exclusive of working capital was approximately $325,000. A garage building was rented at 1214 West Monroe Street, Chicago, Illinois for a term of five years. A labor contract was entered into with Chicago Truck Drivers, Chauffeurs Union, Local 705,
729 for a period of 5 years. The useful life of the vehicles has been as above set forth and a lease was entered into with Radio Corporation of America for the use of a radio dispatch system for a period of five years.

/s/ Aaron Kazanow

Subscribed and sworn to
before me this 12th day
of August, 1959.

Frances Rosenberg /s/
Notary Public
(SEAL)

730

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

On motion of the defendant railroads it is

O R D E R E D that the transcript in re the pre-trial conference of May 11, 1959 be filed.

1 IN THE UNITED STATES DISTRICT COURT

* * (Caption -No. 56 C 323) * *
(Filed Jan 25 1960)

2 TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Julius H. Miner, one of the Judges of said Court, in his court room in the United States Court House at Chicago,

Illinois, on Monday, November 30, 1959, at 10:00 o'clock a. m.

Present:

Lee A. Freeman, Esq.,
(Suite 514, 105 S. LaSalle Street,
Chicago 3, Ill),

on behalf of the Plaintiff;
Albert J. Meserow, Esq.,
(Suite 1353, 231 S. LaSalle Street,
Chicago 4, Ill.),

on behalf of Defendants John L. Keeshin and Railroad Transfer Service, Inc.;
Floyd E. Thompson, Esq.,
(Suite 3300, 135 S. LaSalle Street,
Chicago 3, Ill),
on behalf of Defendant Railroads.

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3 And thereupon the following proceedings were had herein:—

By the Court: I have spent a lot of time on this, but not so much on the motion for summary judgment. That will be denied.

On the question of the production of documents, that is very voluminous, and I don't know how many thousand documents there are; but I have gone over this, and I can give you briefly what I am going to rule.

In my judgment, for your own convenience and protection and intelligent understanding of my ruling, I would much rather dictate to my girl the review of the entire matter and give you each copies, and then we can discuss it.

By Mr. Freeman: That is satisfactory.

By the Court: It is quite voluminous. There are so many sets of documents, each one with different points of view. I never dreamed I would be back in this case again, as I told you before. I sent it out, because I thought I have had enough of it.

By Mr. Freeman: Your Honor, we feel this motion that has been presented by the defendants is an attempt to restrict in advance the plaintiff's case.

By the Court: I will say to you now I will sustain most of their objections. There are just two or three that I want to elaborate on in my ruling. I will give you a bird's eye view of it, if you wish.

By Mr. Freeman: If you want to dictate the memorandum—

By the Court: Here is the memo on it. It is quite voluminous.

By Mr. Thompson: I don't think it is necessary for your Honor to take the time.

By the Court: Paragraph 1 is well taken. No. 2 is well taken. No. 3 is well taken. No. 4 is well taken. No. 5 is well taken.

I have some doubts about No. 6, and I have some doubts about No. 10. The rest of them are well taken, the objections.

I will give you a copy of this voluminous document and give you my thinking on it so we can intelligently argue it. I want to hear you, gentlemen. I don't want to guess at it. It is quite involved.

By Mr. Freeman: Could you give us a date?

By the Court: I will say this about those objections that I said were not well taken. They will depend upon my perusing the documents themselves.

How close are we to trial?

By Mr. Freeman: We would like a trial date as soon as possible.

By the Court: You have been asking for continuances?

By Mr. Meserow: I want to take some depositions.

By the Court: What are you waiting for?

By Mr. Meserow: I am waiting for your ruling on the trial issues.

By the Court: Let me give you a copy of this within three days and set it down for a week from tomorrow for argument.

By Mr. Freeman: Could you make that a week from Thursday?

By the Court: Certainly. We are trying to redistribute the heavy cases, and at a meeting of the Judges, each of us have volunteered to take a heavy case from Judge Robson. I said I would take one, and the next thing I knew I have this one, and then Judge Campbell said, "Any objection?"

I said that I have no objection to what case was given me, but I got four other cases with it. That was an extra bargain.

By Mr. Freeman: Can we set this down?

By the Court: A week from Thursday, and I will see to it that you get my notes so we will know what we are thinking about. It will be easier for me to refer to my notes and for you to follow me. It is [illegible] involved.

By Mr. Freeman: Can this be set for 11:00 o'clock?

By the Court: 11:00 o'clock is all right.

By the Clerk: December 10 at 11:00 o'clock.

By the Court: Having reinherited this case, I want to rush it as fast as I can for trial. I want to cooperate with you. My calendar is being cleared up a little now. It isn't the pressure that I had a year and a half ago when I had them all, and I don't mind sitting down with you gentlemen and working out every detail, seeing if we can't stipulate to a lot of it and then go on to trial on the issues.

This is a jury case, isn't it?

By Mr. Freeman: Yes, and I think you will find the trial will be within reasonable limits.

By the Court: I am not going to rush you. I want you to present your case as comprehensively as you wish and you can.

By Mr. Meserow: Does your Honor overrule the plaintiff's motion for summary judgment?

By the Court: That is over with. There is no question about it. It is a question of fact, and I have prepared a note on that, but there is nothing for me
7 to qualify it. It would be error if I undertook it.

By Mr. Freeman: On the grounds there are questions of fact involved, your Honor?

By the Court: Yes.

By Mr. Freeman: May we have an opportunity to argue that on Thursday?

By the Court: Judge Sullivan had the identical thing years ago, and I will go along with his order.

By Mr. Freeman: You don't want us to argue that on Thursday?

By the Court: No.

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8 IN THE UNITED STATES *DISTRICT* COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 7 is a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the hearing of the above-entitled cause, on November 30, 1959, before the Honorable Julius H. Miner, Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller

Official Court Reporter
United States District Court
Northern District of Illinois

November 30, 1959.

731

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

This cause coming on for disposition of plaintiff's motion for summary judgment and the defendants' motion to limit and restrict the character of documents to be offered at the trial the parties come by their attorneys and the Court being fully advised it is

O R D E R E D that the plaintiff's said motion for summary judgment be and it hereby is denied, and it is

F U R T H E R O R D E R E D that disposition of the defendants' motion to limit and restrict the character of the documents to be offered at the trial be and it hereby is continued to December 10, 1959 at 11:00 A. M.

1 IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

(Filed Oct 18 1960)

2 TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Julius H. Miner, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on Wednesday, January 6, 1960, at 11:00 o'clock A.M.

Appearances:

Thomas C. McConnell, Esq.,
(Suite 1110, 134 S. LaSalle Street,
Chicago 3, Ill.),

Lee A. Freeman, Esq.,
(Suite 514, 105 S. LaSalle Street,
Chicago 3, Ill.),
and
John Paul Stevens, Esq.,
(Suite 820, 105 S. LaSalle Street,
Chicago 3, Ill.),
on behalf of the Plaintiff;

Albert J. Meserow, Esq.,
(Suite 1353, 231 S. LaSalle Street,
Chicago 4, Ill.),

Jerome F. Dixon, Esq.,
Theodore J. Issacs, Esq.,
(Suite 1613, 231 S. LaSalle Street,
Chicago 4, Ill.),
on behalf of Defendants John L. Keeshin and
Railroad Transfer Service, Inc.;

Charles E. Hough, Esq.,
William F. Coale, Esq., and
Louis A. Witry, Esq.,
(Suite 1645, 231 S. LaSalle Street,
Chicago 4, Ill.),
on behalf of Defendant Hugh W. Cross;

Marvin A. Jersild, Esq.,
(Suite 1236, LaSalle Street Station,
Chicago 4, Ill.),
on behalf of Defendant The New York Central
Railroad Company;

Floyd E. Thompson, Esq.,
Philip W. Tone, Esq.,
(Suite 3300, 135 S. LaSalle Street,
Chicago 3, Ill.),
on behalf of Defendant Railroads.

4 By the Clerk: No. 56 C 323, Parmelee Transportation Company versus John L. Keeshin, et al., for the discussion of the Court's memo.

By the Court: I have a jury in the box. We are on trial. I just talked to Washington about getting some medical records here. How long will it take?

By Mr. Freeman: I think it will certainly take the rest of this morning, your Honor.

By the Court: The rest of this morning. Do you all agree on that?

By Mr. Thompson: I am sure it will take that long.

By the Court: I could give you the balance of the morning and recess the jury until two o'clock. Let me talk to the other lawyers.

(And thereupon, the Court gave attention to other matters on his call, after which the following further proceedings were had herein:—)

By the Clerk: Parmelee Transportation Company versus John L. Keeshin.

By Mr. Freeman: Is it possible, your Honor, to recess the jury until three o'clock?

5 By the Court: If it goes beyond two o'clock, I would rather give you another date, because there are twelve jurors waiting. I was hoping I could finish their trial today.

By Mr. Freeman: Your Honor has submitted a memorandum in this matter for the discussion of the parties. The memorandum deals with literally thousands of documents that have been identified by the plaintiff only by number to facilitate preparation for trial, but the Court specifically rules on the admissibility of each one of them.

As a matter of fact, there is a very stark restriction against the use of those documents that the Court regards as inadmissible, for the Court enjoins us, the plaintiff,

not to tender these documents at the trial, and then says that for impeachment purposes only they may be utilized, with the Court's approval, if a specific fact is to be contradicted by this document patently and explicitly and not by inference or implication.

I am appalled, and I know of no situation where any Court in the whole gamut of American jurisprudence
6 has ever entered an order of this character.

The defendants here seek not an orderly and efficient specification of issues at pre-trial in order to facilitate the conduct of the trial, but they seek to emasculate, and they seek to tear asunder the plaintiff's case, even though the pleadings that have been made here, the issues that ve been drawn by complaint and answer specifically provide and specifically would permit the areas of proof, the documents that are involved here as we will demonstrate.

I say, your Honor, that this Court has been misled, misinformed, and imposed upon.

My worthy colleague, Mr. McConnell, will deal with some of these problems, but I feel before we can appreciate the scope and character of the memorandum that has been submitted, it is necessary that you have a brief background of the plaintiff's theory.

The Parmelee Transportation Company was in existence for 102 years, and its services were expressly deemed to be satisfactory, deemed to be satisfactory in
1954, deemed satisfactory in 1955 by reason of docu-
7 ments that have been presented here.

In 1954 there was a committee set up to consider whether or not the costs of this transfer service could be held down.

By the Court: A committee set up by whom?

By Mr. Freeman: Set up by the terminal railroads, and it was a committee of six railroads, and these six

railroads had, in the past, had the same function, and they retained Parmelee.

After eight or nine months of these negotiations, at which time Keeshin appeared with the committee several times, the committee decided that there were no proposals before it that would warrant a change from Parmelee, and reported to the full committee of twenty-one terminal railroads and stated, and it was established at a meeting on February 1, 1955, that it was the consensus of opinion of all these railroads that there should be no change from Parmelee unless they were able to reduce the transfer charge from Parmelee's $1.20 to $1.00 or $1.10.

These remarks are made by the Santa Fe people on February 15 where Chairman Padrick says the following:

8 "Advised the lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless a bid of $1.10 or $1.00, including baggage, was submitted by such transfer companies."

The New York Central man said the same thing, and he said it with respect to Keeshin, as follows:

"J. L. Keeshin's proposal of $1.20 is not sufficient to change from Parmelee. The railroads would be worse off, because they would have to load baggage."

One of the men, Mr. Sullivan, of the Soo Lines, at that February meeting, said:

"The consensus of the committee meeting seemed to be there would be no point in disturbing the present relationship unless we could reduce it to around $1.00."

This was the meeting of February, 1955, and at that meeting it was suggested that the chairman contact

9 Parmalee and secure its proposal. Parmalee did make its proposal in February of 1955, and it proposed to

spend $500,000.00 for new equipment; it proposed various other aspects, and its proposal was favorably received, as the documents themselves indicate.

Not only that, but it was specifically determined at this March 17th meeting that Parmelee would be given an answer in thirty days. The period of negotiations was over. The interviews had been completed.

Here was Parmelee's proposal, and the New York Central vice-president, as a matter of fact, wrote to the chairman and said, "This looks like a very reasonable thing which we should accept."

Thirty days was the time for decision, and then came Cross and Mr. Keeshin, and I am not one to attack Mr. Cross, but Mr. Keeshin has placed him in this position. He has destroyed this man, and the Keeshin testimony, the Keeshin exhibits establish that Keeshin met with Mr. Cross in March, on March 29, 1955, in Washington. He had three to five meetings with Mr. Cross in Washington, and Cross had meetings with him in Chicago during the time from April 1 until June or July of 1955, the time of the intensive negotiations.

He had thirty-four long distance toll calls between Cross and Keeshin, most of them late at night, many of them of long duration, sixty minutes for one phone call, forty-five minutes for another, thirty minutes for another.

All the telephone calls Cross made to Keeshin were made at his home or were charged to his home phone. When he made a call at the Interstate Commerce Commission, he would charge it to his home phone. Every call Cross made during this period, not only to Keeshin, but to the presidents of railroads, when he made it at the Commission, he charged it to his home phone.

The testimony of both Cross and Keeshin admit and concede that they had many telephone calls about the

transfer matter, and this is Cross' testimony categorically.

I asked him the question:

11 "Were there many telephone calls with Keeshin about the transfer matter?"

And he said:

"Yes, there were."

I said:

"Did Keeshin call you about it?

"Yes, he did.

"Did you call him about it?

"Yes, I did."

That appears in Cross' deposition on pages 714 and 715.

What were these telephone calls about? Keeshin and Cross both testified, first, that Keeshin requested Cross to put in a good word for him with the railroads with whom he was negotiating. I don't make that up, as it is their testimony.

Secondly, that Cross conceded that he had reported to Keeshin on his talks with certain of the railroad presidents, Feucht of the North Western, Simpson of the Baltimore & Ohio, and possibly he said Johnston of the Illinois Central, and when Keeshin got this transfer company contract on June 13th, Keeshin testified he

12 called Cross and thanked him for the help he had rendered.

How did Cross make these contacts? First, it was to contact the railroads in the east. This committee consisted of six railroads, three in the east, the Baltimore & Ohio, the New York Central, and the Pennsylvania, and three in the west, the Illinois Central, the North Western and the Santa Fe.

This is how the committee was formed, and Cross first went to Baltimore. He went to Baltimore, we contend, on April 8, 1955, and on April 23rd.

They concede April 23 but deny April 8, but Simpson's

diary and his secretary's diary show here a Commissioner of the United States Commerce Commission, shortly to become chairman of the Commission, traveled to the president of this railroad in Baltimore and spoke to him about the transfer situation and spoke to him about the Baltimore & Ohio financing, which was one of the most complex and one of the most important railroad financing situations in the history of the Interstate Commerce Commission.

This Commissioner went to the president of that
13 railroad and discussed these items with him, and both Simpson and Cross so agree.

That is not all. There were five toll calls from Cross' private phone at home made either while he was at the Commission or when he got home to Simpson during key points in this conspiracy, and what does Simpson say? "Every time Cross called me, he spoke to me about the transfer matter."

Here is his testimony--Simpson testifying in deposition on page 61:

> "Yes, Cross called me in connection with the transfer matter on a number of occasions of which you have telephone records."

We asked him:

> "You do recall that he asked you about the transfer matter in these subsequent calls?"

Listen to this answer of the president of the Baltimore & Ohio:

> "He didn't ask me. He told me."

When Keeshin got the transfer contract, Cross admitted that he called Simpson on June 8 to tell him
14 that the committee had done a good thing in giving this to Keeshin, to thank him, in other words, for the help he had given him, and this is Simpson.

Both Cross and Simpson admit that they had these telephone calls, that they did discuss the transfer thing, and we find Mr. Cross traveling to Baltimore for this purpose, and we also find him traveling to Philadelphia, because Mr. Carpi testified, the vice-president of the Pennsylvania Railroad, that in April, right at the forefront of this conspiracy, Cross visited him in Philadelphia.

He refused to say that Cross discussed the transfer thing. He denied it, but Cross stated that it was quite—Cross' testimony was that he admitted he discussed the transfer with Carpi, but in a casual way. He made six toll calls to Carpi.

At the same time he was calling Simpson, or close to those dates and close to those hours.

He would call Baltimore, and then he would call Philadelphia, and I contend the record is quite clear that Cross' activities with Carpi during this April to June 15 period were in connection with these transfer negotiations, and the railroad's own memoranda demonstrates it.

There is a New York Central man named Bone, chairman of this committee, and he called Smart of the Illinois Central on April 28, and he says, "I understand certain railroad presidents have been contacted", and then on May 23rd the Santa Fe Railroad said, "Keeshin had appealed to the executives of the Baltimore & Ohio, Pennsylvania, Chicago & North Western, and possibly others."

What did these men do? They said there was a matter of high policy involved. "Our next meeting must be one where the top executives appear, because we have a problem."

What about the New York Central? When the Baltimore & Ohio president was contacted in April, he immediately called in his top passenger executive and talked

to him about it, and we find the top passenger executive goes to New York and says to a New York Central vice-president, "It is time we changed from Parmelee", and Mr. Perlman, the president of that railroad, on April 27 discussed this matter in Chicago.

16 Can you imagine the president of this billion dollar company discussing a minute problem like the transfer arrangement in Chicago? He does, and he says to this man, "Keep this case open until I have had an opportunity to analyze it", and the chairman of the committee plaintively talks to his New York counterpart, Mr. Baird, and says, "What should the position of the New York Central be in view of Mr. Perlman's analysis?"

That was April 27, and on April 28 this same man, Mr. Bone, called the committee members, including the Illinois Central, and said, "I understand the presidents have been contacted," and on April 29th the Illinois Central president, Wayne Johnston, went to Washington and said to Cross, "I understand that you are going to get a job with Keeshin if he gets the transfer contract," and Cross said, "Yes, that is true," on April 29.

There is the New York Central. What about the North Western? If there is any dispute about this, I will quote Mr. Johnston's testimony, because it is just as clear as a bell. Here is his testimony:

17 "On April 29 I went to Cross in Washington and asked him if he had any intention of coming to Chicago, and he said if things worked out satisfactorily he probably would come to Chicago in connection with this contract. I would assume that his interest was that if Keeshin received this contract, that he was to come to work for him. He gave me the impression that he was coming to Chicago if everything worked out satisfactorily."

And then this question:

> "It wasn't just a question if everything worked out satisfactorily. He specifically stated that if this company receives this contract he was going to work for them?"

And Mr. Johnston's testimony, "That is right."

The North Western president, Mr. Feucht, was called on May 13 by Mr. Cross. He called Simpson and he called Carpi on May 12 or May 13, and he called Feucht on May 13, and Feucht prepared a memorandum of that call, and that memorandum is very illuminating of
18 Mr. Cross' activities at this time.

It is entitled, "Memorandum of my conversation with Hugh Cross, Commissioner, Interstate Commerce Commission, 4:15 P.M., May 13," and I will just read the first sentence, which is as follows:

> "Hugh Cross stated that he was very much interested in seeing that J. L. Keeshin got the new contract with the railroads here in Chicago to handle baggage."

and so forth.

What else did Mr. Feucht say? Mr. Feucht said that as a part of that conversation Mr. Cross said to him, "How are you getting along? Do you need an increase in commutation fares?"

Feucht said, "No, we just got one." Feucht also testified that he had no acquaintanceship with Cross, that he was quite upset by this call, that he felt it was improper, and that is his testimony.

Well, these telephone calls occurred, and in consequence, whereas a decision was to be given in thirty days
19 after March 17, instead they set up a committee meeting on May 19.

May 19 was an important date, because suddenly this committee is expanded, and the top executives of Balti-

more, of Philadelphia come to Chicago to attend a meeting for the first time in their history.

The top executives of Illinois Central and the North Western likewise come to this meeting. Obviously, something more than merely a determination of this transfer was involved.

There was a policy, and Parmelee transmitted a proposal establishing a maximum rate for six years. There was a discussion, and the committee recessed until June 3rd for the purpose, as they themselves said, of getting an expression of opinion from their top executives, not the top passenger executives, but their top executives.

Surely, the shadow of Cross' influence was there, and so we contend, but what happened? There were three memoranda prepared as a result of that meeting, three memoranda specifically recommending Parmelee. There may have been more, but we only procured three of the three western railroads, the Illinois Central, the North Western, and the Santa Fe, and let me just read this.

Here is the North Western's memorandum of May 27 from their vice-president to their president:

> "It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads that Parmelee should be awarded the contract because of their years of experience, their financial integrity and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract."

As a matter of fact, the memorandum written to this vice-president says:

> "It is quite possible that the Parmelee rate per coupon would be less than the Keeshin proposal."

Remember that this whole negotiation was because of

the cost. They wanted to hold the costs down.

The Santa Fe said the same thing, only more so. The Santa Fe memorandum of May 23 said as follows:

21 "We propose to recommend the continuance of our arrangement with Parmelee because of our long association with that company, and its satisfactory transfer of our passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition, we will avoid the possibility of labor trouble in connection with operation by a new company with different union."

These three memoranda of the western railroads caused consternation in Mr. Keeshin's and Mr. Cross' camp, and we find from the toll records there was an intensive amount of long distance telephoning between Keeshin, between Cross, and between a man named Forgash, an agent of the New York Central Railroad, who was the president of one of their important subsidiaries, U. S. Freight Lines, and who is well established as a key actor in this drama.

22 As a result of these telephone conversations, I contend, and we have not proven that part of it yet, although we have proven everything else I have said, on May 25 Mr. Cross sent three telegrams.

He sent three telegrams to whom? To the president of the Illinois Central whose man had made a recommendation favorable to Parmelee, to the president of the North Western, the president of the Santa Fe, the three railroads who we know had favorable memoranda following the May 19 meeting, and these telegrams said:

"Expect to be in Chicago May 31 — June 2, at which time I shall call. Hope I may have a short chat with you."

How nice He knew that the committee had recessed until June 3rd. He was coming in, because it was essential to get western railroad support, and his intervention was effective.

The three western railroads switched their vote at midnight practically on the eve of the June 3 meeting, or on the next day, and they awarded the contract to Keeshin at a higher potential rate, and without even determining some of the essential elements of the transfer arrangement, things they had been discussing at
23 great length, and they didn't even determine them.

How did Cross accomplish this, and what happened to Cross when he came to Chicago? This is a fantastic story of conspiracy, established by records and admissions.

Cross first called Mr. Feucht at 10:00 A.M. on June 1 in his office. Feucht had not come back from his Memorial Day week-end, and he left word he could be reached at the Union League Club.

Feucht called Cross and he didn't find him in, and he showed the telegram to his special counsel, Nye Morehouse, and asked him to get in touch with Cross.

This is Feucht's testimony on page 2727 to 2728 and other pages.

Morehouse, who didn't know Cross from Adam, who had never talked to him before, called Cross and went up to his bedroom in the Union League Club June 2.

He went up there, and what did he discuss? They both admit that he discussed the class rate case, and a division case that was then pending before the Commission, which has been described before the Commission
24 as one of the most important cases in the last decade before the Commission.

He discussed those cases, and the code of ethics, which has been excluded here, specifically prevents any par-

ticipant in the lawsuit before the Commission from discussing it ex parte with a Commissioner.

It is an obvious principle, but he discussed this with the Commissioner, and this was on June 2, and on June 11 the matter was to be argued before the full Commission.

All of the preliminaries had been concluded. The case lasted a year. Mr. Morehouse steps up, and there is the Chairman of the Commission, Mr. Cross, who he had visited in his bedroom, and he says, "Mr. Chairman, I would like to introduce myself. I am Mr. Morehouse."

How blatant could they be, and this is excluded.

What about the Santa Fe Railroad?

First, you know the North Western, Mr. Feucht says that the decision was made in a meeting with Brennan, his passenger manager, the evening of June 2, and Mr. Brennan prepared a very enlightened memorandum, because Mr. Brennan's memorandum says, "We have changed from Parmelee to Keeshin," and I quote, "due to new developments during the past twenty-four hours."

If you want to know how significant those new developments are, read the North Western's annual report for 1955 where they spend a page telling you about the tremendous success they had in these cases that Morehouse and Cross discussed on June 2.

Well, Feucht gave one story of why he went for Keeshin. Brennan gave another story. This, too, is indicative that both of them didn't know what they were talking about, and the only reason they went for Keeshin was Cross' intervention.

What about the Santa Fe? Cross sent a telegram to Gurley, and Gurley testified that just prior to June 3, the day of the committee meeting, he asked his executive vice-president, Rydin, to bring him up to date on the transfer.

He said, "I never in my whole experience with the railroad ever came in contact with this transfer problem," and Rydin, his executive vice-president, gave him the
26 memorandum that their passenger department had prepared. It was a memorandum recommending Parmelee.

It was a memorandum which specifically stated on its face that Keeshin had contacted the Baltimore & Ohio, the Pennsylvania, the North Western and possibly other railroads, and Gurley said to Rydin, "We are going for Keeshin," and when I said, "What reasons did you give him," he said, "I gave him no reasons."

This man, Rydin, went over to the vice-president in charge of passenger traffic, Duffy, and here is the way the question was put, and this is their testimony:

> "Mr. Duffy, if it was possible and the Santa Fe would not be injured, we would like to seriously consider giving it to Keeshin."

Duffy testified that way two or three times that the question that was put to him was not whether Keeshin's bid was better than Parmelee's, but it was, "Can we go for Keeshin without injuring the Santa Fe?"

Mr. Duffy further said he instructed his committee-
27 man, and he said it this way: "We had as a matter of policy decided to vote the contract to Keeshin." That is all the Santa Fe does.

What about the Illinois Central? Well, the Illinois Central, Mr. Johnston, the president, knew of Cross' personal interest. He knew that Cross would get a job if Keeshin got the transfer contract.

He asked Cross that, and Cross admitted it. He also received a telegram from Cross and he sent back a cordial telegram to Cross saying, "I will be in Washington this week, but if I don't catch you there, I will be back and glad to see you on May 31 to June 2."

Cross came in to see Johnston on June 1 or June 2. The Illinois Central had a memorandum recommending Parmelee, and their committeeman began telephone activity on June 2 starting at 7:00 P.M. at night and lasting until 10:00 P.M.

This kind of nocturnal activity by a company that was considering this on the merits is impossible to conceive, but they did, and he made all kinds of notations and all kinds of reasons, and on June 3, in the morning, they decided to vote for Keeshin five minutes before the
28 meeting.

The same thing happened with the North Western. The committeeman at the North Western didn't even know what the determination was going to be until, as he said, he was on his way over to the committee meeting with the passenger manager, and Mr. Brennan said to him, "Mr. Quackenbush, we are going for Keeshin," the first he ever knew about it.

Cross was a very self-sacrificing man. He traveled to Baltimore and Philadelphia and Chicago at his own expense. He made all these toll calls and sent all these telegrams at his own expense.

It wasn't for official business. It couldn't have been. Cross did say, "I charged these calls to my own bill because the appropriations for the Interstate Commerce Commission were inadequate. I took up part of the burden."

It was a public spirited idea, but when we had the financial officer of the Interstate Commerce Commission on the stand, we found in 1954, 1955, and 1956 they got more money than they asked for. They got eleven
29 or twelve million dollars in the appropriations, and Mr. Cross had to pay for his own telephone calls. It doesn't make sense.

Keeshin did call Cross and expressed his appreciation for what Cross had done, and I say he expressed it more concretely. No. 1 was the executive job that he had promised Cross, and what is the testimony?

Mind you, Judge, we are not at the stage where we have proven everything, where we have put in all our evidence. These are admissions on deposition, and these are admissions that are contained in documents, and they are hard to get.

This much we have proven more concretely, I imagine, than any case that has ever been pending in this court.

What did Keeshin say about the executive job? He conceded he had offered Cross a job, but in connection with the possible purchase of a bus company in 1954, that he had never rescinded that offer, that he had a general understanding with Cross he could have a position with him whenever he left the government, and that understanding and that offer was in existence at the time of the transfer negotiations.

This is his testimony. What did Johnston testify? I have already told you that. He heard a rumor from a railroad man on April 28 or 29 and went down to Washington to ask Cross about it.

What did Mr. Gurley of the Santa Fe Railroad say? Gurley filed an affidavit, and we have the affidavit, and you have excluded it in your ruling.

Gurley's affidavit says very, very clearly that prior to the grant of this transfer thing, and I quote, "I heard rumors and statements to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing . . ."

By the Court: Let's stop right here. This very document you are talking about, which is probably symbolic of others — is that right?

By Mr. Freeman: Yes, your Honor.

By the Court: How could you possibly admit that document in evidence under any conditions, and how could I possibly sustain it legally?

31 By Mr. Freeman: You could admit it in evidence under any condition. There are no conditions under which this is not admissible. There is a broad avenue of proof known as admissions against interest.

Mr. Gurley is a defendant in this lawsuit. Mr. Gurley is president of the Santa Fe Railroad, a defendant in this lawsuit. He has prepared an affidavit under oath.

This affidavit says that he knew prior to the time he made his decision for Keeshin that Cross had a personal interest in this particular contract, in that he was going to get a job.

That is an admission against Gurley, and since we have alleged a conspiracy, which we think we can adequately establish, this admission is binding upon all the co-conspirators.

By the Court: Not when Gurley is available as an adverse witness.

By Mr. Freeman: Your Honor, we could merely submit questions to them for admissions and they would have to give it to us. We don't have to proceed on

32 the basis of testimony of Gurley, although we are going to bring in Mr. Gurley.

By the Court: If you submit questions, that is one thing.

By Mr. Freeman: Your Honor, we can ask this be admitted in evidence as an admission against interest. We are fortunate to have these kinds of documents.

Normally in a suit of this kind, we are not so fortunate. It is very rare, your Honor, for any kind of a conspiracy to have one document which sets forth the entire conspiracy and is signed by all the conspirators.

This is what you are compelling us to do. We have

the equivalent of that in a compilation of documents that they did sign, in a compilation of memoranda they did prepare and are responsible for, and their testimony under oath, which we will bring out either in the form of depositions that will be submitted for those witnesses that are not available, or that are now dead, or the actual testimony, but this is a perfectly conservative ortho-
33 dox 100 per cent basis of proof.

There are no reasons that I know why this can be excluded, and the defendants have not asked that it be excluded, your Honor.

You have ruled this is excluded, and the defendants have not asked that it be excluded. They have said, "This affidavit is immaterial and hearsay as to every one but Gurley," but they concede that it is admissible against Gurley.

We want it admissible against Gurley. That is Mr. Gurley's statement.

Mr. Feucht testified—and Mr. Feucht is the North Western man—that shortly after he had received this telephone call from Cross on May 13th that his traffic manager reported to him, "There are rumors floating all over Chicago that Cross is to get a job with Keeshin if they get the transfer contract."

This is pretty substantial proof of this kind of a pay-off, if you will.

We have also gone further, and we were able to establish that not only was Cross intending to take this job, but he took concrete and affirmative steps to do so
34 by buying a house in Deerfield, Illinois.

All of this is excluded, and all of this, you say, is inadmissible.

Keeshin was awarded the transfer contract on June 13, and he was to go into service on October 1.

On June 28, two weeks later, Cross came to Chicago

and selected a house on June 29 in Deerfield. He himself said, in a letter he wrote, "The house which I bargained for so hurriedly . . ."; and a contract of purchase of this house was executed on July 11, 1955, and in this contract of purchase Cross, in his own handwriting, interlined, "possession to be given buyer on September 15, 1955."

Why? Because he wanted to be in that house two weeks before Keeshin went into service on October 1, and Cross transmitted this contract in a handwritten letter, and he said, "Please treat this matter in confidence and withhold the use of my name." This is Cross' letter: ". . . withhold the use of my name."

Yet, your Honor, Cross proceeded surreptitiously throughout these things. All his communications for this house were written out in longhand by the Chairman of the Interstate Commerce Commission, by one of the more important government functionaries of this country, writing these letters out in longhand. Why?

He didn't want his secretary to know. What is more, Cross made thirty-four long distance calls—these calls with Keeshin, and while he made many calls to these presidents, too, his secretary testified she knew of not one single call.

He kept it from her. This is part and parcel of the conspirators' activity. He kept from his secretary what he was doing.

His secretary's deposition was a complete flop, Judge Thompson thought. She knew nothing, and that is right, but she should have because this guy was a busy guy.

On July 19, 1955, his broker, Wilbur, wrote to Cross that he was going to take an architect out to this house and get his ideas and the approximate costs of providing a room for his maid.

At first there was intensive effort to get this house deal closed before October 1, but the Senate investigation

started in the middle of September, and what do we find? It is a slow-down, and on November 16 the seller's attorney, Clarence Dever, a man of tremendous integrity, not involved in this case, is advised by Cross' broker, and look what he is advised:

> "In view of the Senate Committee investigation with reference to Hugh Cross, Mr. Cross was more anxious than ever to drop the deal and would gladly forfeit the $4,500.00 already paid."

This house had a price of $38,000, and he put up a deposit of $4,500.00, which was no percentage relationship to that price, but I will indicate to you where I think the $4,500.00 may have come from.

Here on November 16, and the executive committee meeting of the Senate was September 15, but on the 16th Cross is advising the seller, "Keep my $4,500.00.
37 Cancel this deal in view of the Senate investigation."

He was told he couldn't. He was told they would not accept the forfeiture and they would ask specific performance to go through with the house deal.

What did Cross do? He bought the house in the name of his broker. It was later put into a land trust.

The broker put up the money and took title to it, and Cross resigned and moved into the Deerfield house in December of 1955 and put it on the market in April of 1956 and sold it in May of 1956.

Who did he sell it to? He sold it to M. E. Klein, the manager of coal traffic rates and sales of the Pennsylvania Railroad. Is this a coincidence? Maybe it is.

Mr. Klein testified he didn't even know who Cross was. Mr. Klein's activities were being handled by the General Attorney for the Pennsylvania Railroad, Mr. Haberkorn, who was in all the legal committee meetings of the railroads dealing with the Keeshin contract and the Cross problem, and he testified he didn't even know who

38 Cross was, whose house he was coming into and buying.

Well, I don't know what the inferences of that are and how far our proof is going to go, but certainly we shouldn't be precluded now. Certainly our hands and arms and hearts shouldn't be cut out at this time when we are attempting to establish some of these facts.

This is the house deal. This tends to establish concretely that Cross had an intent of coming to Chicago. On the day he signed the July 11 contract to purchase the Deerfield house, he also listed his Washington house for sale, the same day, the first time he had ever listed his Washington house, and Thompson says, "No", but the testimony is that it was the first time it was ever listed.

We also contend that cash was made available to Cross through his son, and it was $4,500.00 in cash by a trailer deal.

The United States Freight Lines is a subsidiary of the New York Central. The New York Central owns forty-five per cent of the stock through a securities com-
39 pany, the Linden Securities.

United States Freight owns all the Lasham Cartage Company. The United States Freight's president is Morris Forgash, a man who appears in this thing ad infinitum, and whose deposition we want to take again for evidentiary purposes because Mr. Forgash resides in New York, and we had considerable difficulty with him the last time we got him, and we want him now.

Under your ruling you exclude everything about Forgash. You exclude his telephone calls to Cross, and you exclude his telephone calls to Keeshin, and you exclude the fact he was in Washington and in Chicago at every key point during this entire conspiracy.

On every day that has any significance, Forgash is

here, and you say, "All of these documents are out."

Actually, we want his deposition. We will take his deposition whether your ruling will stand or not, but we urge you that this kind of a limitation on our ability to discover evidence, on our ability to establish proof, can't be. It can't be.

You didn't intend it, and you have been misled in this matter.

Forgash is president, and his company was negotiating in New York for the purchase of thirty trailers from the International Harvester Company and General Motors.

They were dealing with the factory branch in New York and there is the customary way of doing it.

On April 13, and mind you, the contact between Keeshin and Cross is the latter part of March of 1955, on April 13 this guy and the New York company writes down to Carrolton, Illinois, a community I suspect your Honor isn't familiar with, although you have toured the State, and possibly you are, but in Carrolton, Illinois, there was a little company called the Carrolton Farm Supply Company owned by Hugh Cross' son.

He had never sold a trailer in his life before. He had never had a single dealing with Lasham Cartage, and they said, "We will buy the thirty trailers from you. You will get $150.00 apiece, or $4,500.00. You have only to sign the document, and you have nothing to do, no obligations, no commitments, nothing. Sign it, and we will send you the check when the trailers come to us."

The trailers were shipped out of Ohio to New York. April of 1955 is when the deal was made to give Cross this, and June was when it was completed. July, 1955, was when the deposit was made for the house.

I don't know whether that $4,500.00 was used for the deposit on the house, but I say this $4,500.00 was cash made available.

There are telephone calls from Forgash down to Carrolton.

42 There are calls from Keeshin to Carrolton, Illinois, and to Hugh E. Cross, and all of these telephone calls you would say are inadmissible.

We can't connect them up and we can't even tender them in evidence.

Well, we think that as our complaint alleges, Keeshin procured the help of Cross to influence these railroads, and he gave Cross an inducement of certain valuable considerations.

One was the executive job.

Secondly, there was the trailer deal, and there are others in this record that I won't mention.

The railroads had a significant stake here, too, and they were being approached by an important man. It is conceded in answers to our complaint that there were many important regulatory matters pending before the Commission.

Cross continued as a Commissioner deciding cases involving those individuals, those companies who he had gone to for aid, and what is more, they were private conversations.

They were private conversations about some of
43 these regulatory matters between Cross and these same people who whom Keeshin was negotiating.

I have told you about the Baltimore & Ohio financing thing. It is a big thing and can't be belittled.

I don't want to go into the details of it, but I think it is significant. You have excluded it.

I have told you about the class rate thing, the conversation with Mr. Morehouse in Cross' bedroom the day before the decision, in the month before the argument.

This, too, is important.

I should also tell you about a case that only involves

$70-million a year in additional revenue, the coal roll back case, and the decision of the Commission was four-to-four, and Cross voted for the railroads, so that that rate was not suspended and was not subject to investigation, even though a year before Cross had participated with the Commission and established the very rate that was being rescinded.

Is this significant? Is this something that we
44 should be permitted to go into before the jury?

I say that your ruling with respect to not tendering documents, with respect to this limited and constrained impeachment possibility destroys our opportunity for a jury trial.

You are usurping the authority that should be with the jury to determine what inferences lie in this proof, and it is said, your Honor, in connection with some of these Cross matters that, "We, the railroads, didn't know about it, and therefore, you must exclude it." But they knew.

These six railroads that are defendants here knew of Cross' activities, knew of Cross' executive job, his personal interest.

The Baltimore & Ohio knew, because Simpson had personal contacts with Cross and admitted it. As a matter of fact, Simpson sent his messenger boy, the traffic, the passenger traffic manager Whittington, to do the work on this thing.

Whittington came to Chicago to the meetings for
45 the first time, and he led the discussion, and his memoranda shows he was willing to offer Keeshin four cents more a coupon as a top rate than we had offered, only to get it for Keeshin.

He was a participant, because his president had directed it, and the New York Central—I have told you enough about them.

The Chairman of this committee had related the fact that presidents had been contacted after Perlman, its president, had said in Chicago, "I want time. Keep this case. Don't decide it now. I want to analyze it."

That is a euphony.

"I want to see which way to swing on the Cross situation."

As to the Illinois Central, their committee member was told by the New York Central of this contact with the president. Johnston, the president, made inquiry of Cross about his executive job and was told that was true, and Cross came to Johnston on June 2 and visited him.

The Santa Fe, the North Western, the Pennsyl-
46 vania, they had knowledge of various aspects of Cross' activities.

Let me go now to the order itself, if I may. You have sought in this order to provide detailed rulings on thousands of documents. The issue isn't even before you. The issue is not before you.

We had listed documents by numbers pursuant to what we felt was an accommodating order, to both parties, to make available the outside limits of the documents that would be produced at the trial with no surprise, but we said in our list, "We don't think we are going to have to submit all of these, because we think, because of admissions and other things, and the progress of the trial, a lot of this will be dispensed with."

We also said, "We may have additional documents as a result of discovery, and we will tell you about them."

Keeshin and Cross, two principal defendants, didn't even file a list. They said, "We will submit whatever documents are relevant," and nobody quarreled with them.

Objections were filed. As the order required, we
47 filed objections on the ground of materiality, and they filed objections largely on materiality and relevancy.

The only issue presented to your Honor was an issue in a motion prepared six months later by the railroad defendants. They filed a motion in which they said, "Strike this list of documents. It doesn't perform the function we had hoped, or, in the alternative, carve out certain areas of proof."

In this motion and in the supporting memoranda there was no discussion of the individual documents. "Here are scopes of evidence," they said, "which you can rule upon, because there are no factual controversies. There are no issues that you need to be informed about at the trial. You are in as good a position now as you were then." Phony--but nevertheless, this is all that you were presented with, your Honor.

You were requested to rule upon the admissibility of these individual documents, and many of them do not lie within the scope of proof that was being discussed in these motions.

48 As a matter of fact, the defendants themselves, in their motions said this, in their memoranda on page 5 in support of their first motion when they said, "Carve out these areas," that, "obviously, there are many objections upon which the Court can rule only in the course of trial. Objections of this category have not been included in the instant motion."

You have ruled, your Honor, on thousands, literally thousands of alleged objections and alleged documents.

You have moved them in and moved them out of this case, and where you have moved them out you have said that we cannot even tender them, and you have not seen a single one of them.

You have not seen a single one of these documents. These documents are described in instances as a memorandum from Norton to Brennan, a memorandum from Brennan to Norton.

The first memo is in, and the second is out. How could you come to such a conclusion?

It is impossible to determine the materiality and relevancy when the documents are not even adequately
49 described, when the plaintiff never even argued these objections that were made to documents.

This was merely an attempt to preserve objections so there wouldn't be a concession. The real purpose was if there was an objection to the genuineness of a document, this could be resolved in pre-trial.

This could be an important and constructive step in facilitating the trial. The party would have an opportunity to establish genuineness, and this was really the only thing that could be accomplished at pre-trial, not the ruling upon materiality and not the ruling on relevancy.

We didn't make a mass offering of these documents as your order would indicate. We didn't make a wholesale offer.

We listed them, and we intend, if permitted by your Honor, to submit these documents individually to provide a proper foundation and identification to demonstrate their materiality to the issues as the trial progresses in an orderly and proper manner.

We don't propose to even offer two documents at the same time. We will offer one.

50 We expect the jury to digest this as well as the Court, and we will do it only in that form.

There is no attempt at the wholesale offering of proof as your Honor seems to indicate, and as expressly as alleged.

It seems to me, your Honor, and I say this in great deference, that this decision could not be a matter of judicial determination but clairvoyance.

You would have to have a clairvoyance. I could not de-

termine and identify these documents with any care in less than six months or three months, after I have worked with them for many years, as there are so many and they are so diverse, and you have made specific errors and glaring errors.

For example, your Honor, you have admitted, you have overruled an objection of their's dealing with Keeshin memoranda. This is item K-54, 57, 58, 60 and 61.

We didn't even list them. They were not on our list. They were self-serving memoranda prepared by Mr. Baxter, which was an attempt to justify a situation.

51 We didn't offer them, but you have overruled an alleged objection, and these, therefore, become admissible.

Am I to construe that to mean the defendants have the right to put those self-serving documents in? I assume not, but here are documents that we didn't even list that you have admitted, and there are others.

Here is a very important item, your Honor, Item No. 3 in your memorandum, which says that you sustain the objection and you make it admissible. These are telephone company records of the Baltimore & Ohio toll charges.

There is no such thing. You know what that Item 3 was? It was the telephone records of Cross—ninety-three telephone slips charged to Cross' telephone, upon which there were admissions and confessions that Cross had made calls in connection with the transfer matter to Keeshin and to railroad presidents.

They are all excluded under a misapprehension and a description that is not accurate.

Item No. 22, page 3, is next. Again, you eliminate

52 all of what you say are documents concerning the sale of Cross' house or the purchase of the house, but there are included in those documents, Exhibits 3 and

6, for example, that relate to the coal roll back case, not even to the house.

Item 14, page 4. You exclude the Forgash documents, and I have already discussed that, but here I must call your attention to 14 and 16 where you have excluded all of the documents except Forgash Exhibit 1, and Ryan Exhibit No. 1.

This, I construe as a sardonic sense of humor, because those two documents are the subpoenas that we served on Forgash, the subpoena that we served on Ryan to produce these documents that you now say are inadmissible, and you tell us that we can, before the jury, present to the jury the subpoenas that we served on them and nothing else.

I think it was the result of a misapprehension, your Honor. I think it was the result of a misconception of what was involved here. I think you have been imposed upon, as I say.

53 Let's go further.

By the Court: Here I have before me that the defendant railroads and railroad presidents move to strike the list of documents filed by plaintiff, and so on down the line, in a document filed in 1959.

I have another one, the plaintiff purporting to respond to an order, and so on. I am going to the orders before me.

Of course, I have not had a chance to examine the documents. I never purported to make any such statement. They were bulked in thousand lots, and I merely passed upon the propriety and admissibility of these lots in wholesale bundles.

By Mr. Freeman: You didn't do that, as I will demonstrate to your Honor. Let me show you, for example, your rulings here on these examples that go beyond the defendants' objections.

In Item No. 4, and this is a good example, in Item 4 where you say that Simpson's appointment book and Simpson's secretary's appointment book are excluded, inadmissible.

This is a specific item. Here is the item. Here is Simpson's appointment book.

54 On April 8 he shows a meeting with Hugh Cross, ICC Commissioner Cross.

On April 23 he shows a meeting with Cross. His secretary shows the same thing.

This is part of the traveling Commissioner bit. This is part of Cross going to Baltimore to talk to this fellow and they admitted that they talked about the transfer.

This is a specific item, not bulked in thousands, but this is a specific item that is excluded.

Here is another item of Johnston. Johnston presented a telegram. Cross admitted that he had sent three telegrams to Johnston, Feucht and to Gurley, and the telegram to Feucht is admitted.

Cross sent the telegram saying, "I will be in Chicago," and this is one item, Item 2 and 37, documents consisting —and actually this is only one document—consisting of a telegram from Johnston, president of the Illinois Central to Cross, and this is an answer to the telegram from Cross, and it says:

"Dear Hugh: I shall be in Washington tomorrow, Friday, for a Board meeting, and if the length of
55 the meeting permits will contact you. Expect to be back in Chicago Saturday and will be delighted to see you when you are here May 31 through June 2."

He did see Cross. This telegram is throughly admissible. It is excluded and excluded specifically.

Here is the specific item of Hugh Cross' registration at the Union League Club, the days he was there during this

period. One time it is May 31, 1955, at 10:50 P.M., to June 3, 1955, 5:00 P.M. He was there, and this is when he said he would be there. He was at the Union League Club.

He had a meeting with Morehouse there. There are other such meetings, and there are not many—four registration slips, and only two or three of them are significant, but all specifically excluded, not in any thousand lots.

Take the Senate transcript, your Honor, and here is an exclusion that is of key importance, and here again you have gone completely beyond the defendants' position.

You have said to us that we cannot tender the
56 Senate transcript, that we cannot refer to the Senate transcript except for impeachment purposes and then only if explicitly, if concretely we are able to contradict a specific fact, not by inference or implication.

Here is what Mr. Thompson said to Judge Robson in pre-trial, and in his memoranda before you.

Mr. Thompson said on page 15 of his memorandum:

> "Admittedly the statements made before the Senate sub-committee by defendants or other persons would be admissible in this trial either as admissions of a party or, depending upon the course of the trial, as self-contradictory," and

he didn't say self-contradictory so specifically that you could draw a line and know yes and no, but he said that we can refer to them; that we can use them as admissions against interest, and he said it again in his reply memorandum on page 37:

> "We do not contend that evidence may not be re-received against a particular defendant of an admis-
57 sion made by him in his testimony before the Senate committee, but we contend that no reference should be made to the Senate committee."

They said that would prejudice them, and that contention was based, not upon any case reference, but he was trying to promote a new principle.

By the Court: I would admit legally and almost in blanket form admissions against interest as admissible.

By Mr. Freeman: Of course.

By the Court: In any form and in any shape and manner. The defendant in his own rights makes an admission orally or in writing against his interest pertaining to the issues in the case before me, and I would have to be blind or dumb to exclude that from the record.

If any of those are included in there, in passing upon thousands of bundles, you will find probably a good many of them, and I can't predict now or prejudge it, but I am positive that if some individual documents were brought before me and were brought within the confines of the propriety of evidence, why, of course, I would admit them.

58 By Mr. Freeman: Your Honor, this is our whole argument.

By The Court: That isn't what the briefs say. I have had fourteen or fifteen bundles of documents.

By Mr. Freeman: Your Honor, how are we going to argue the admissibility—

By The Court: Only by submitting them to counsel and going over them individually, and if they are material to the issues, I can pass upon them.

By Mr. Freeman: Your Honor, we didn't submit any bundles of documents.

By The Court: Of course not. I didn't see the bundles. I am talking about fourteen groups.

By Mr. Freeman: There were no fourteen groups, your Honor. We submitted a list of documents under various headings for the convenience of counsel to tell them what information we had.

They wanted to know what we had, and they don't know about a lot of things, but they are not in documentary form. They don't know about a lot of things even now about this conspiracy that we will prove at the trial and which we have a right to.

59 We will give them—

By The Court: I will go over your pleadings again and your documents before me in the light of your argument. Of course, I am going to protect you on the law.

By Mr. Freeman: Your Honor, we suggest, we humbly suggest this memorandum should be completely reconsidered; that there should not be any final determination of relevancy and materiality.

By The Court: How did you offer them?

By Mr. Freeman: We didn't offer them.

By The Court: How did they come up on objection before me?

By Mr. Freeman: Your Honor, we had come before you for the purpose of setting this cause down for trial. You said—

By The Court: I asked you to do it.

By Mr. Freeman: Your Honor, you said—

By The Court: You asked me for a trial, and I said to Mr. Meserow and Judge Thompson, "Let's go to trial." Mr. Meserow said he wanted to take more depositions.

By Mr. Freeman: We appreciate that, but this is

60 over a year ago.

By The Court: I am sorry; I am talking about recently.

By Mr. Freeman: Over a year ago we came to your Honor and said we wanted to go to trial, and you said you couldn't. We presented our order denying a motion, our motion for trial setting, and in order to facilitate the trial date that we hoped would come soon, and Judge

Thompson submitted an order to me, and I am the sucker here, and said, "Let's have a list of documents. We can file objections. We will know where we are going," and I agreed to it.

I did, and I submitted this to you. You didn't consider the order. It was an agreed order, and your Honor said, "Well, it is nice to have agreement." The record so shows.

By The Court: I still would say that. I believe that if you pick out those documents you are talking about with such confidence as being relevant and material, admissible, and submit them to counsel, both as against interest or as material to the issues in the case, and they reject them, I will be very happy to sit with you and pass upon them item by item and do it intelligently.

61 By Mr. Freeman: We shouldn't be subjected to that before trial. This is something that has never been done.

By the Court: We do it in pre-trial every time.

By Mr. Freeman: I don't know of any such situation.

By the Court: How much can you agree on it? That is cutting the red tape.

By Mr. Freeman: We should not be subjected to rulings in advance of trial on materiality and relevancy.

By the Court: I will check the pleadings again. If I have done you an injustice, I will correct it. There is no question about it, in the light of your argument. I don't want to blanket you out.

By Mr. Freeman: We are now.

By the Court: I will check it again and see what is before me, more than your argument, and I will see what is before me on that motion.

By Mr. Freeman: Let me say one other thing and then I am through with my argument.

By the Court: I don't mean to cut you short. I will go with you until two o'clock if necessary.

62 By Mr. Freeman: I would like to call two items to your attention in view of your indulgence.

You have excluded all of the papers dealing with the house, the house purchased by Cross and the house sold by Cross, and this, we contend, goes beyond any objection that has been filed.

By the Court: If there are no objections to any of these documents, I shouldn't have ruled upon them.

By Mr. Thompson: There were.

By the Court: I will plead guilty. If there are documents before me which I included and to which there are no objections, it was an over-sight. It was inadvertence or a misunderstanding of the motion before me.

Can I go any further than that?

By Mr. Freeman: Your Honor, I have no further argument to make, but I just want to call this to your attention; that in connection with this house deal that Mr. Thompson, on pages 133 to 138 of the pre-trail hearing, and I just wanted you to have that notation, first said that the Court could rule on the house deal,
63 because there were no controverted facts and then went on to discuss all the controversies of facts there were and ended up by saying:

> "If Cross were the only defendant here, whether that would be admissible or not would be rather clear, that it might be admissions against Cross, if that became an issue as to whether or not he was coming to Chicago to go to work for Keeshin."

Judge Robson specifically asked Mr. Thompson the question:

> "In view of the fact there may be relevant and competent testimony that Cross was going to get a job, isn't there an area here to show that he was selling his home in Washington and that he had purchased a home to show that that intention was correct?"

Thompson answered it that way. In other words, to me, it seemed to me in pre-trial that that issue was conceded.

By the Court: Let me ask you a question naively. Suppose Mr. Cross has testified in depositions that
64 he has agreed — that he was offered and agreed to take a job, and would you need any more corroborative testimony about the house and about documents and memos on that, or would that be binding forever and a day upon the jury?

By Mr. Freeman: Cross denied it, but Keeshin conceded it. Johnston conceded it.

By the Court: I have not heard that denial from anybody. Keeshin admitted it.

By Mr. Freeman: Keeshin, Gurley, Johnston, Feucht on the house deal established it, and there is Cross' denial of that.

By the Court: You have not said he denied it.

By Mr. Freeman: I was giving you those elements of proof that establish it. Cross denied it, and therefore we had that problem, and we know —

By the Court: I don't mean to say that I knew about it. This is all new to me. This whole argument is new to me. When I ruled upon the documents, I merely ruled upon what you have in the confines of your papers, the pleadings here, nothing else.

By Mr. Freeman: Unfortunately, I say to your Honor with all due regard to my wothry opponents, you have
65 been misled, and you have been imposed upon and we have had the heart cut out of our case.

By the Court: If I have been misled — In the first place, I am not a surgeon, and I don't cut anybody's heart out, and secondly, I am going to follow the rules of evidence just as closely and as accurately as my best ability will permit.

By Mr. Freeman: Your reputation is strong in that direction. You have never been criticized—

By the Court: I will say to you now unequivocally that if any documents are made as admissions against anybody's interest on trial before me, they will go in.

If I have ruled against them, I never intended to.

By Mr. Freeman: In view of that statement, I think we should suspend this entire discussion and wait for trial.

By The Court: I don't think Judge Thompson or any other lawyers would ask me to keep out those kinds of admissions.

By Mr. Freeman: I think they would. They have, your Honor.

By the Court: Does anybody else want to argue?

66 By Mr. Freeman: Mr. McConnell would like to say a word.

By Mr. McConnell: I am not going to impose upon your Honor with any long arguments.

By the Court: This is my job and I am happy to hear you.

By Mr. McConnell: I have nothing to add to what Mr. Freeman has presented here, except I do want to reiterate really what your Honor has said.

We had a pre-trial hearing on this matter before Judge Robson, as your Honor knows.

By the Court: No, I don't know.

By Mr. McConnell: We spent a lot of time there.

By the Court: I get it now, but I didn't know anything about it.

By Mr. McConnell: We had a full transcript made of it and arguments pro and con on the different areas of proof.

By the Court: Was it ever reduced to writing?

By Mr. McConnell: Yes, it was, and I am going to read now from the transcript.

By the Court: All right.

By Mr. McConnell: I had argued before Judge
67 Robson.

By the Court: May I take a short cut with that?

By Mr. McConnell: Yes.

By the Court: I will have to read that and abide by it.

By Mr. McConnell: All right.

By the Court: And see if I agree in principle. If I find some error, I am not going to follow it, but I have to read it and at least be informed of what he heard and what he stipulated and agreed upon.

By Mr. McConnell: We assumed, of course, that would be so, because we had this hearing, and Judge Robson had committed himself as to how he was handling the matter.

The next I knew, the matter was transferred back to your Honor, and no further arguments were had, and no further discussions were had.

Here is what he said after I had argued in opposition to Judge Thompson's attempt here to cut this thing up into little segments, and so forth, and I said that was a characteristic way of handling an anti-trust suit
68 so you would lose the over-all view of the situation, and he said this:

> "I do not intend to break it up and try to rule on segments to break it up. What I am going to look at is a general effect of what my rulings will be on the over-all of this case, and if there are segments that enter into it, that I determine are not a part of it, it will be on the basis of looking at the pleadings, the issues that are joined and what I feel should be the scope of the trial."

Issues are made in this case on the pleadings which were filed, and that is significant here in this particular instance, because there was a very serious attack made

on these pleadings before Judge Sullivan, and there were extensive arguments and extensive briefs and Judge Sullivan overruled the objections to this complaint and held that it was a good complaint, and that the allegations were not subject to such an attack.

By the Court: I don't have that before me.

By Mr. McConnell: I just wanted to add this
69 to what has already been said.

In this complaint a large number of the allegations are taken up with the issue of Cross' participation in this conspiracy, and Cross, bear in mind, is not just named as a conspirator, but he is a defendant, and it is alleged he used his position on the Interstate Commerce Commission — and that is the allegation in the complaint — to induce the railroads to take the business away from Parmelee and to give it to Keeshin, and that is the very heart of the lawsuit.

I don't know how it came about, and I am not saying anything about your Honor's ruling or anything else, but those allegations, the proof which has to do with those allegations has all been excluded here by your Honor's order.

70 Further than that, there is the little paragraph in there that we can't even tender and offer the evidence which is in the complaint, which has been sustained against serious objection by another Judge of this same Court, and I just can't understand how we can be precluded from whole areas which have to do with Mr. Cross.

By The Court: That is precisely why I told Mr. Freeman I would be delighted to hear you in open court on the whole matter. Did I say that to you?

By Mr. Freeman: Yes.

By The Court: I always want to hear you in open court. If I made any mistake, I will correct it, if I made any mistake that was inadvertent or because I didn't understand the issues before me.

I didn't know that Judge Robson had had a pretrial and had gone into all of these matters. I want to check it and find out. It is difficult.

By Mr. McConnell: It is difficult, I know.

By The Court: It is the first time that I know of after twenty years on the bench of throwing to the Judge
71 fourteen bundles of records and documents and saying to him, "Do you agree or disagree with that area, with that type of proof?"

It is not intended that the Judge should examine each document and say, "That belongs in this area and this doesn't." It is up to you to bring it before me.

By Mr. McConnell: The law says you can't make a blanket offer of documents. You have to offer them individually.

By The Court: There is a perfect misunderstanding between you lawyers and not the Court, because the matter came before me on these documents, and I went into them because—exactly as these documents, I thought, required me to do.

If I am wrong on it, I will check Judge Robson's rulings or transcript, and I will hear Judge Thompson and Mr. Meserow for the next half hour or so.

By Mr. McConnell: If anybody wants to take any blame, give it all to me.

By The Court: I am taking the blame.

By Mr. McConnell: All I want is the right to offer evidence.

72 By The Court: These are the documents I am ruling upon, nothing else. I have nothing else before me. If I have to go further into it, I am going to go into it.

By Mr. McConnell: If we have a right to offer these documents at the trial, that is all I ask.

By The Court: I understand that, and they are saying, "No."

By Mr. McConnell: They are saying we can't offer documents at the trial which are in the pleadings.

By The Court: Judge Thompson.

By Mr. Thompson: If the Court please, we have been listening for an hour.

By The Court: I will give you all the time you want. I have a two o'clock jury matter, but I want to know what I have been listening to.

By Mr. Thompson: I am not surprised to know that you want to know what you have been listening to, because it has had nothing to do with the matter before you.

You have been listening for an hour or an hour and a half to a rehash of matters.

By The Court: I have practically been listening 73 to an argument before the jury on a conspiracy charge.

By Mr. Thompson: That is right, and now may we get to the subject at hand.

They were ordered by this Court, by an order tendered by us more than a year ago, in fact pretty near two years ago to file a list of documents they intended to offer in evidence, and the Court in its order said that if there are any objections to any of these documents, they should be presented ahead of the trial so that they might be disposed of.

By The Court: Who entered that order, Judge Robson?

By Mr. Freeman: No; that was the agreed order.

By Mr. Thompson: There is nothing agreed about it. I tendered the order, and your Honor entered it. Then after the order was entered, the documents were filed, a great mass of documents. In fact, they copied a list of all they had marked.

We filed a motion to strike the list as being an affront

to the Court and not in compliance with the Court's order and of no help to anybody because it wasn't asked that
74 we be furnished a list so we wouldn't be surprised at the trial.

It was perfectly obvious why we were asking for the list, and that was to sift out the few grains of wheat from all the chaff that they had marked.

Well, they didn't comply with it, and we moved to strike the whole list and have the Court order them to file an honest list of documents in compliance with the order.

Then when the matter was switched from your Honor to Judge Robson, we went before Judge Robson and he called a preliminary call, and he said that he wouldn't be able to act in any manner, but that we should have a pretrial hearing at such and such a time, which was well in advance.

We then decided that we should file a motion for pretrial rulings on categories of evidence, not pretrial rulings on these documents alone, but on categories of evidence, and we filed such a motion and asked for rulings that all the evidence, oral and documentary, in a certain category be excluded because it was either collateral to the issues or wholly irrelevant to the issues made by
75 the pleadings in this case.

That motion was presented, and we filed a brief in support of the motion in considerable detail.

They filed an answering brief to that brief of ours. We filed a reply brief, and then we had the pretrial hearing before Judge Robson.

It lasted all day. He made no rulings. The transcript of the pretrial hearing was—

By The Court You say he made no ruling?

By Mr. Thompson: I said he made no ruling.

By The Court: I said a while ago, was an order en-

tered, and I was told no, but I understand there was a ruling made.

By Mr. Freeman: Just a transcript.

By Mr. Thompson: I will tell you what it was if your Honor will wait just a moment. There was a pretrial hearing held, and the transcript was made of that hearing at Judge Robson's request.

Judge Robson, at the conclusion said, after having heard arguments on both sides, that he would like to have counsel for the plaintiff file a supplemental memorandum which would supplement the points which they had—which
76 had been discussed, but which they thought had not been fully covered or which they felt were still open questions and should be covered.

They filed a document which they called a supplemental memorandum which was nothing but a rehash of what they had already filed.

We filed a reply to that. There are five briefs which were all turned over to your Honor, should have been at least. They were in the file, and there was our brief in support of our motion for rulings on areas of evidence, oral and documentary, their answer, our reply, their supplement and our reply.

We came before your Honor after it came back before you and called your attention to the fact that there had been a pretrial hearing, and that there was a transcript, and asked your Honor for an order ordering it made a matter of record in this case and filed.

We did that purposely so your Honor would have it called to his attention and have it delivered to you by the clerk, and I assumed it was.

All those documents have been called to the Court's
77 attention by us. There hasn't been any question about it. The matter has been submitted to your Honor for

rulings, our formal motion for rulings, our brief supporting our motion for rulings.

All of this business they have been arguing, this jury speech you just heard, has been dealt with in the written briefs, and we have demonstrated there is a lot of hogwash and there is no connection between one item and another item of their alleged gigantic conspiracy.

It is their whole theory, apparently, that if they charge a conspiracy, that thereupon all contacts, conversations, suspicions and conjectures are admissible in evidence because a conspiracy has been charged.

That is utter nonsense, as your Honor well knows, and we have demonstrated that in our brief.

We also cited cases in our brief that it is not only right and proper but essential in the administration of justice, particularly in a case of this character, that the Court rule on areas of evidence and exclude areas of evi-
78 dence where there are no disputes of fact and where the issues are purely ones of law, or include them if he thinks they ought to be included.

There are no disputes of fact that the Interstate Commerce Commission as a Commission holds hearings, has millions of cases involving billions of dollars pending before it, that they do rule on these cases, and that decisions are made.

There are no issues of fact on any of that, so we moved that all evidence, oral and documentary, relating to proceedings and procedures before the Interstate Commerce Commission be excluded, and we briefed it and supported it with our brief, and they filed no answer that is worthy of recognition, just this flow that you heard this morning of a jury argument, which will fade into insignificance as compared with the flood that will be turned loose on the jury.

One of the things pending before the Commission at that time was the ex parte matter of refinancing the bond issue of the Baltimore and Ohio Railroad. Of course it involved millions upon millions of dollars.

79 It was in a favorable atmosphere for refinancing, at least they thought so, and subsequent events have proved it was much more than they could possibly have dreamed of, so they did refinance. There was no controversy. It was of no concern to the plaintiff in this case. It was no concern of any other railroad.

It is no concern of anybody excepting The Baltimore and Ohio Road and the public, and the public is represented by the Commerce Commission, and so it was perfectly proper and right that they have these discussions of the details respecting the issuance or carrying-out of the refinancing or the reorganization of the bond program.

Mr. Simpson happens to be president of The B. and O. Railroad. Mr. Simpson, of course, and his finance officers and his attorneys appeared before the Commission and talked with Hugh Cross, among others. It is perfectly proper that they should do so.

Mr. Simpson also had an inquiry from Hugh Cross as to what he knew about the transfer contract situation out

80 here in Chicago, and Mr. Simpson told him he didn't know anything about it, but he said, "I will find out and let you know what the status of it is," and he said he called up Mr. Cross and told him.

Cross was certainly entitled to be interested in this situation out here if he wanted to be, and it was perfectly proper and right that he should be, but, of course, it is all an evil that these two men who happen to be named defendants in this case should be having a conversation without any proof of any conspiracy existing.

They want that to be used as a suspicion.

That is one sample, and I am not going through all of this. I am not going to make any jury argument, because the jury isn't here, and I will save my speech for them.

The whole thing is dealt with in our briefs, and your Honor doesn't need to hear from us orally, and there we footnote every statement of fact we make, and every statement of fact is supported by the footnotes, and so I pass now to the motion that is before the court.

81 By The Court: That is what I would like to hear.

By Mr. Thompson: And one on which I think the court has ruled in part. In other words, we ask to have that category of evidence, which is all interstate commerce proceedings excluded because there is absolutely no testimony or evidence of any character and couldn't be that the Commerce Commission had anything to do with this transfer thing out here, and so it simply affords them the opportunity to raise a terrible boog-a-boo to be argued to the jury, and of course it can't know it was perfectly proper for Mr. Simpson to be talking with Mr. Cross in the matter of this ex parte proceeding, and they want it assumed, and they say in their briefs, and they make perfectly clear what they want to use this for, and they say The Baltimore and Ohio Railroad was saving itself $300,000,000 a year in interest as against saving itself $3,000 a year on the Chicago transfer contract.

That is the kind of argument they are going to make to the jury and, of course, it hasn't the slightest bearing on anything, and it would be vicious violation of the

82 most elementary principles of the administration of justice to allow any such foundation for any such argument.

We go the Senate investigation. The Senate investigation was an investigation of the conduct of Hugh Cross. No one else was a party to that investigation.

Hugh Cross was not permitted to be represented by counsel, of course, couldn't cross examine any witnesses, had nothing whatever to say about the course or conduct of any such inquisition, and he is sitting there with questions thrown at him from all sides by speeches made to him, not questions, but speeches made to him, and then he is supposed to say yes or no or try to crawl out from under the speech.

That sort of thing wouldn't be admissible if it had occurred in some court. No other court would respect it and would not admit it in evidence under any circumstances.

What we said was in our brief, and what is the law, and I don't need to advise your Honor that it is, because he
83 has already expressed himself, but if there is a statement which is an admission against interest by anyone who testified there, obviously it is admissible. Of course it is.

Also, if there is a statement of fact made by a witness which is contrary to a statement of fact made by that witness on the witness stand in this court, that may also be admitted, but under no circumstances can what Keeshin said or Johnston said or Feucht said before the Senate Committee be used, by reading the transcript, against Hugh Cross, nor can what Hugh Cross said be used against any of the other defendants.

It can only be used as an admission of that person, and he can't admit for anybody else, and it can only be used to contradict his testimony and can't be used to contradict somebody else.

By The Court: May I make my statement clear? It is against that person if it is material to the issues.

By Mr. Thompson: You have made it perfectly clear. All I am saying is we move to exclude from the jury's

84 hearing any reference to the Senate Committee investigation because the jury doesn't comprehend all of those things, and so we said that if the statements made there are to be used as admissions against interest or to be used for impeachment purposes, which are very limited, then they can be done by simply saying, "Were you on such and such a day in Washington, D.C., asked this question under oath and did you make this answer under oath?"

You don't need to ever mention, of course, that it is before the Senate Committee, and your Honor has consistently all through here ruled out every reference to the Senate Committee investigation which is thoroughly sound and can't be questioned, it seems to me, by anyone who want to be fair in the matter.

Then we come next to the category of the real estate dealings of Hugh Cross. Nobody who is a defendant in this case had the slightest connection with whether Hugh Cross sold his house in Washintgon and bought a house in Deerfield.

He was solely acting in a private capacity. There
85 is no indication that anybody knew anything about those transactions, and, of course, they are even conceding that in some situation they might be used as an admission against Cross of some character or other, and they could not possibly ever be used against anybody else.

It is not in furtherance of any conspiracy. It is not a part of any conspiracy, and it all occurred after the contract was let.

The contract was let on June 13, 1955, and if there was a conspiracy at any time it ended when the contract was let, of course.

Their whole theory is this contract started in March and ended in June on the 13th.

We ask to have excluded all of that because it is irrele-

vant to any issue in this case, and it proves nothing and doesn't even tend to prove anything as to whether there was a conspiracy back in March until June, when in July he buys this first piece of property, sells his own and buys this one.

This was, by the way, property belonging to his children in Washington, and the property was bought by his
86 children and the deed so shows. That has nothing to do with this lawsuit, and so we exclude that.

The next one is that when he got ready to sell this property, he sold it to a man who happened to be an employe of The Pennsylvania Railroad. The man and his wife were looking for property, and the evidence all shows, and there is no dispute about any of this, that the broker found this piece of property, among others, and showed it to them.

They said they wanted the property, and they bought the property, not even knowing who the owners of the property were.

They met Cross, but Cross didn't mean anything to them. They didn't know who Cross was, and they bought the property and drew the money out of the bank in Oak Park and paid for it in cash with their own money.

Those things are the facts. They prove nothing. They certainly don't prove that a conspiracy existed back from March until June, 1955, whereas this all occurred in 1956, and therefore if they can scream before the jury that here is one of the Pennsylvania employes who was under
87 the jurisdiction of Mr. Capri a vice president of The Pennsylvania Railroad, and so on, and so on, well, you can picture the screaming that will go on about that, whereas it will be a matter completely collateral to the issue and can serve no purpose except to prejudice all of these defendants, who knew nothing about it, had no connection with it of any kind or character.

We have asked to have those five areas of evidence excluded, and your Honor has excluded all of them by ruling that the documents are not admissible. That is a limited ruling your Honor made, because he was thinking of the objections to the documents and didn't have in mind the comprehensive motion that we made for these area rulings on evidence.

It is perfectly obvious, and I think your Honor is so right on those five that there is no point in arguing it any further. You have the briefs if you want to review them, but it seems to me it is so obvious that if your Honor's ruling that the documents should be excluded is sound, then, obviously, oral evidence on the same subject must be excluded or the ruling on the documents means absolutely nothing.

When you come to the next three categories, 6, 7 and 8, those are the categories which have to do with formalizing the contract with the transactions that took place in the turn-over of the business from Parmelee to the Keeshin service, and the performance by Keeshin of his contract.

It seems to me those are so obviously immaterial that I don't want to spend any time arguing it, and I don't think they will ever offer any documents on that category, notwithstanding the fact that they listed two or three thousand documents in that category.

You have overruled the objection, but you have said, of course, the objections may be re-presented at the time the documents may be presented for final ruling when your Honor gets the area of ruling.

On 9, 10 and 11 you also exclude categories. The No. 9 category is the matter of including through ticket this transfer charge which has been a subject of discussion for years and years and has nothing to do with this

lawsuit at all, and you have also excluded No. 10,
89 the meeting of the officers of the various official meetings of railroad executives, where there is no showing the subject was ever mentioned, and therefore, of course, simply a use of the idea that because an opportunity to do wrong existed, because two people happened to meet at a meeting, they certainly must have done wrong. That is just nonsense, too.

When you come to category 11, we ask you to exclude all the telephone call records that were not identified with this Chicago transfer business. Of course, if a witness is on the stand and he admits he had a telephone conversation — if Cross admits he had a telephone conversation with Keeshin and the transfer thing was discussed, the telephone record can be used for no purpose except to fix the time of the day and the date. It proves nothing by itself, and we ask to have it excluded only in the cases where there is no connection made whatever with the issues in this lawsuit.

We ask specifically for rulings. We made written requests for rulings, and they are all in our briefs, in
90 our motion, and we have prepared a formal order which we feel ought to be entered on the memorandum your Honor has already filed, and that formal order rules as you have ruled, in the areas where you have ruled so far as your rulings on documents are concerned.

What concerns us is that you say in your opinion the following:

> "My ruling on documents shall not be a ruling with respect to testimony on the same subjects, except the reason for this is that it is not before me now, and it may come before me on further proceedings."

It is before you now. You overlook the fact that our motion for rulings covered categories which covered both of them.

I don't think we need to go into the details of this evidence, because we have covered it all in our brief and have show the fallacy of it.

Just to show some illustrations, Mr. Morehouse testified positively that he was not sent over to the Union League Club to see Hugh Cross about this case, that he
didn't mention this case, that he knew nothing about
91 the transfer business, that he didn't mention it to
Cross and Cross didn't mention it to him, that he happened to see Cross at the Union League Club, and he talked to Cross about certain preliminary procedural matters that had to do with the rate division cases.

That was a case in which the railroads who were defendants in this case held opposite positions. The eastern railroads wanted one rate different, and the mid-continent railroads another and the Pacific, the mountain and Pacific railroads another, and so there was no consensus among the six railroad defendants or even among any other railroads as to what that order ought to be.

That case was then a fresh case, was in the very early proceedings of starting to get ready to be presented to the Commission.

It wasn't before the Commission in an active sense, and Mr. Morehouse was just asking him some procedural questions, so he testified and so Cross testified.

There was also pending before the Commission, the class rate, another kind of a rate case which was then
pending before the Commission and which was sub-
92 sequently argued before the Commission.

Mr. Morehouse and Cross both say that matter was not mentioned at all at that meeting, and I used that only as an illustration to show you in our brief we have exploded all of this gigantic conspiracy of theirs, and we will take care of that when we come to the trial.

These areas of evidence we have to know before the

trial, and the courts have held it is proper that we should know whether we have to meet this question of the Interstate Commerce Commission proceedings.

Do we have to prove that Cross and his associates decided correctly every time they decided a case in which these railroads were interested, or do we have to prove they decided incorrectly, and if they decided incorrectly, did Cross participate one way or the other?

Of course, that would just be endless and it would be utter nonsense. There can be no presumption that a public official having a problem of making decisions in human affairs, which includes all our judges, all our commissioners, all our executives, that they are
93 crooked just because they have big matters before them.

The presumption is that they are honest, and they have proven absolutely nothing to indicate there was anything wrong with any proceeding down there, and so that being true, we have to know whether that is going to be opened up or not, and we have covered that fully in our briefs, and I don't want to spend any more time on it.

We also have to know whether or not we have to face the prejudice and bias of this Senate Committee investigation and be subjected to the results of an investigation of that character which has no limitations, no regulations, no protection of any kind of character, and particularly are we to be convicted because the prosecutor of the Senate Committee wrote a report which nobody ever saw until they published it in the Senate proceedings, in which they said Mr. Cross was indiscreet, and this and that and so on?

It doesn't even find Cross guilty of being in a conspiracy with the railroads out here. It says nothing about the issue in this case, and certainly, it says nothing
94 about all the rest of the defendants, but it says right in the report that it rests upon information that their

agents have picked up around the country, hearsay on hearsay, and, of course, we have to know whether or not we are going to be faced with that sort of trash in this case.

Then you come to the Cross deals, the real estate deals which are covered by 3 and 4 of this motion of ours. If those are to be received, we have to get all of the testimony that has to do with when Cross tried to sell his property.

The evidence shows in this case that he had been trying to sell it for several years. It was a bulky property he didn't want after his children had gone. The children had both married and gone, and they didn't need the big house they had in Washington or outside of Washington there, and so that is an issue.

What would the jury decide after they heard all of this evidence? It would take a day or two to try that issue as to whether or not Cross sold his property honestly in Washington and bought the property honestly in Deerfield.

95 After we got all through with it and the jury decided no, that he was wrong with that, that he shouldn't have done that, what does it decide in this case? It doesn't prove there is any conspiracy. It doesn't tend to prove there is none, and it would be smearing other defendants who had nothing to do with it.

We have to know whether the transaction at Carrolton, Illinois, is to be gone into, because there, of course, we have involved a number of issues which have nothing to do with this lawsuit.

There is no testimony, not even a suspicion that it has anything to do with the Chicago transfer contract, except the identity of names.

Then, of course, you take the telephone records. Their

whole argument is that if I call up the secretary of the Governor of Illinois today and talk to him and the telephone record shows I talked to him for ten minutes, and then I call up some fellow who is in the penitentiary, and I talk to him for a few minutes on the same day, and then I call my friend, a Congressman down in Washington and talk to him on the same day or the next
96 day, and then later it appears this friend in Washington was a friend of the fellow who was in the penitentiary and the matter was going to come up before the Governor as to whether he should be pardoned, so a gigantic conspiracy finally develops, and because three or four of us talked on the same day or within two or three days in succession, obviously we must have been engaged in a conspiracy.

Of course, that is so silly there is no use talking about it any further. We cover that in our brief.

I hand to your Honor the formal order which I should like to have the court enter and which will rule on the three categories that are before the court and which are the matters that the court is asked to rule upon.

That is all I have to say. Thank you, your Honor.

By Mr. McConnell: I will take about two minutes, your Honor. Judge Thompson disposed of our position on our case as being hogwash and nonsense, and all of that. That isn't going to fool this Court.

97 This is a serious lawsuit, and I think everybody recognizes that. If he doesn't recognize it yet, he will before he gets through.

He wants to know what the issues in this case are. He has been practicing law longer than I have, and I have been practicing law thirty-five years, and if I want to know what the issues in the case are, I go and look at the pleadings, and that is where I find out what the issues are, and that is where I am asking your Honor

to go to find out what the issues are in this case, and the question is whether we can prove issues made in the pleadings with evidence which is competent.

How can you say that evidence which tends to support allegations in a complaint is immaterial or irrelevant? I never heard of such an argument in my life that you can take a complaint which has been subject to every attack this lawyer can think of and has been sustained by this court, and then come in and say we can carve out every bit of evidence that has to do with every allegation about Mr. Cross.

I can understand why these railroads want to get us as far away from Mr. Cross or any evidence concerned with Mr. Cross as they possibly can. It is not hard to understand it.

You have heard what Mr. Freeman's analysis of some of that evidence was. The charge in the complaint and the charge to be made at the trial is that Mr. Cross did betray his trust, that he did betray his position on the Interstate Commerce Commission, and that he used that position in order to induce railroads who were doing business with that Commission to deal with Mr. Keeshin instead of with Parmelee.

That is what we allege. That is what this lawsuit is about, and we have a right to prove it.

I say that with all due deference to your Honor, that whether you do it under the guise of ruling on evidence or excluding issues or categories or whatnot, that is the issue in this lawsuit, and we have a right to try it before a jury, and we have a right to try it without the pronouncements of Judge Thompson as to whether or not it is hogwash or nonsense or this or that or the other thing.

99 It is a serious lawsuit, and we are here attempting to prove it, and all I am asking of your Honor is the

right we have in every lawsuit in this building, to produce our evidence in support of our allegations.

On page 16 of this complaint it is alleged, and it is denied, and it is an issue in this case:

> "Prior to November 23, 1955, defendant Cross did exercise his power as a member and as chairman of the Commission in favor of other defendants in matters pending before and subjects over which the Commission had supervision. On November 23, 1955, defendant Cross resigned his position as chairman of the Commission as a result of an investigation of his conduct by the United States Senate Committee on Government Operations, Permanent Subcommittee on Investigations and prior to the announced institution of public hearings by said subcommittee. Said resignation was for the purpose of concealing the terms of the conspiracy."

100 We allege it. We have a right to prove allegations in a complaint. That is elementary. That is where you start with lawsuits. You don't start anywhere else, except in the pleadings, and I have never heard of any court saying that evidence which was material on an issue pleaded and denied and an issue in a case was irrelevant and immaterial.

By the Court: Nobody is arguing the right of the plaintiff to prove a conspiracy.

By Mr. McConnell: This allegation was attacked and denied.

By the Court: Nobody can deny you that privilege. All we are arguing about is what is proper under those allegations and nothing else. I don't care whether Mr. Freeman calls it paralyzing the plaintiff, and I am saying that respectfully, or whether Judge Thompson says hogwash.

I am here to determine the question of how to be fair

to both sides and how to let you prove your conspiracy within the bounds of the law and how to exclude testimony beyond the pale.

By Mr. McConnell: And I say we are entitled to introduce the evidence.

101 By the Court: You may say that, and I may disagree with you. I may agree in part and disagree in other points. All I can say to you now is you will have a chance to legally prove a conspiracy within the confines off all the rules of evidence.

By Mr. Freeman: Is your Honor disposed to give us another time when you will want to consider this?

By the Court: I want to familiarize myself with that transcript, and I want to know much more than I have known before, and I will notify counsel when I am ready to decide it.

Let me ask you a question. How soon will you be ready to go to trial? You asked me for more time.

By Mr. Meserow: We are ready to go to trial, your Honor. Again, depending on what your final ruling is here, we may want to take some depositions, because we do have a counterclaim pending, but that will not delay the trial.

By the Court: Depositions on what, so we will know what counterclaim you are talking about that is affected by this?

102 By Mr. Freeman: He charges the City Council was corrupted by us.

By the Court: Is that before me also and before the same jury?

By Mr. Meserow: That is an answer and counterclaim in this case.

By the Court: What does that have to do with my ruling here?

By Mr. Meserow: Nothing.

By the Court: Why don't you go ahead up to now and get ready? I presumed when you mentioned depositions that we couldn't go on without those depositions. Maybe we can't, but they have nothing to do with my ruling here.

I will try to expedite this matter as early as possible. I will notify you, and I will give you a date for trial.

By Mr. McConnell: On the date for trial, if your Honor please, I have a trial before Judge Adesko.

By the Court: I will hear you at that time to the convenience of all parties.

By Mr. McConnell: I have a trial which is now set before Judge Adesko which the parties and the court 103 have made a firm date on, and that involves the Estate of Eugene McDonald and his widow's attack on that estate.

That case is going to take six weeks to try starting February 1st.

By Mr. Freeman: Any time thereafter.

By Mr. McConnell: I can't try this case during that time.

By the Court: I will see to it that you will not be interfered with or imposed upon from making a real fee in the other case also. I have seen the papers about this, and I know how important it is.

By Mr. Thompson: Let's have the understanding it will be somewhere around April 1st.

By the Court: It will be somewhere around that time, if it is convenient to all parties.

By Mr. Freeman: It is.

104 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 103 is a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the hearing of the above-entitled cause, on January 6, 1960, before the Honorable Julius H. Miner, Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter—
United States District Court
Northern District of Illinois

January 6, 1960
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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MEMORANDUM ON DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S LIST OF DOCUMENTS AND IN THE ALTERNATIVE FOR PRE-TRIAL RULINGS

On August 1, 1958, this Court entered a pre-trial Order to the effect that the parties shall exchange lists of documents they respectively intended to offer into evidence at the trial of the case, and that objections to the admissibility of any documents on the said lists should be raised by a certain date for argument and ruling before trial.

Both parties have filed objections to certain of the documents referred to by the list submitted by the other. Objections by the plaintiff, however, are not before the Court at this time.

The instant motion of the defendant railroads and railroad presidents was filed on June 30, 1959. It is described as one "to Strike Plaintiff's List of Documents and In the Alternative For Pre-Trial Rulings". The motion has also been adopted by the remaining defendants, Keeshin, Railroad Transfer Service, Inc., and Hugh W. Cross.

The motion to strike plaintiff's entire list of documents is denied. The Court is of the opinion that when counsel submit to the Court a list of documents which they state they intend to offer into evidence at the trial of the cause, their actual intent is presumed to be the same. Absent competent evidence to the contrary, this Court will not question counsel's motives or intentions.

The items on "Plaintiff's List of Documents," filed September 25, 1958, to which the defendants object and the grounds for defendants' objections, are generally identified in defendants' Motion as follows:

1. Items 83-94, on grounds that they are irrelevant, immaterial and prejudicial.
2. Items 19 and 20, on grounds that they are irrelevant, immaterial and prejudicial.
3. Items 1, 22-29, 31-33 (except LaSalle Exhibits 0-11b), on grounds that they are collateral to the the issues raised by the pleadings and immaterial.

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4. Items 30 and LaSalle Exhibits 10-11B in 33, on grounds that they are collateral to the issues and immaterial.
5. Items 50-56 as irrelevant and immaterial.
6. Items concerning the negotiation of the contract after the award of the contract on June 13, 1955, as immaterial.
7. Items relating to change-over of the transfer service from plaintiff to Railroad Transfer Service.

Inc., after award of the contract on June 13, 1955, as immaterial.

8. Items concerning the operation of the transfer service by Railroad Transfer Service, Inc., after Oct. 1, 1955, as irrelevant and immaterial.
9. Items relating to proposals that a terminal transfer charge be passed on to passengers, as irrelevant and immaterial.
10. Evidence concerning attendance by defendants or employees of defendant railroads at meetings, as irrelevant and immaterial.
11. Items consisting of telephone company records of telephone calls unless evidence is presented identifying the calls with the subject matter of the suit.

The Court has examined the parties' descriptions of each Item and of the exhibits included in each Item, to the admissibility of which the defendants object. Defendants, by their Objections and Motion, object to a substantial number of the plaintiff's proposed documentary exhibits. The Court has carefully considered all objections to the admissibility of documents referred to on plaintiff's list, all briefs, and all arguments of the parties in support of their respective positions.

The rulings hereinbelow set forth concerning admissibility of *documents* are not intended to control as to, nor may the parties assert these rulings as controlling on, evidentiary questions relating to *testimony*. Although the rulings herein are capable of being construed as indicating the Court's position on the issues to be tried in the case and the relevancy or materiality of certain facts to the issues or the testimony. It may be that such limitation may be appropriate, but that will await further proceedings and argument specifically directed to that end.

All documents the objections to which are here overruled

are rendered not inadmissible only to the extent that the Court will permit plaintiff to tender them for admis-
734 sion into evidence at the time of trial. Documents here ruled inadmissible may not be so tendered at the trial. Whether any document, not by these rulings rendered inadmissible, will be admitted into evidence at the trial is a question reserved by the Court for ruling at the time of its tender by plaintiff at the trial.

Any document to which defendants's objections are here sustained may, upon approval by the Court, become admissible, notwithstanding, only for purposes of impeachment, and then only to prove the inaccuracy of specific facts testified to on direct examination, in which case the document herein ruled inadmissible may be admitted into evidence if it patently and explicitly, not as a matter of inference or implication, states the fact concerning which the direct testimony is being controverted.

PLAINTIFF'S ITEMS NUMBERED

1, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33—Documents concerning 1955 sale of Mr. Cross' Maryland residence and purchase by him of Deerfield, Illinois, residence in July, 1955. *Objection sustained.*

30, 33—Documents concerning 1956 sale of Deerfield residence by children of defendant Cross to an employee of Pennsylvania Railroad. *Objection sustained.*

2, 37—Documents consisting of telegram from Johnston, President of Illinois Central, to Mr. Cross; Mr. Johnston's diary and appointment sheets. *Objection sustained.*

3—Telephone company records of Baltimore & Ohio toll charges. *Objection sustained.*

4—Documents consisting of affidavits of and a letter from Mr. Simpson to the Senate Committee on Investigations; a letter from Baltimore & Ohio counsel to Washington counsel concerning Mr. Simpson's appearance before

the Committee; Mr. Simpson's appointment book; Mr. Simpson's secretary's appointment book; Senate Committee subpoena to Mr. Simpson; and Subpoena duces tecum to Mr. Simpson in this case. *Objection sustained.*

5, 6, 7, 8, 9, 13—Documents consisting of Mr. Whittington's 1955 appointment book; transcript of proceedings of American Association of Passenger Officers; hotel registration records concerning his visits to New York and Atlantic City; transmittal letter from counsel. *Objection sustained.*

735 10—Documents referring to "complimentary letter" to Mr. Holt for his work as chairman of committee handling Chicago transfer problem; conferences and correspondence with I.C.C. commissioners concerning cleaning of freight cars.

Carpi Exhibits 2 and 4—*Objection overruled. Remainder of objection sustained.*

11—Documents concerning composition of Executive Committee of Eastern Railroad Presidents Conference in 1955, and attendance at meetings. *Objection sustained.*

12, 14, 15, 39—New York Telephone Company records concerning Mr. Forgash's and United States Freight Company calls and telegrams; records of Washington and Chicago hotels showing Mr. Forgash's visits. *Objection sustained,* except Forgash Exhibit 1, to which no objection has been made.

16, 17—Documents concerning United States official toll calls; Illinois Commerce Commission tickets showing toll calls by Mr. Cross; Illinois Commerce Commission bulletin on toll calls; Mr. Cross' travel vouchers to Commission. *Objection sustained,* except Ryan Exhibit 1, to which no objection has been made.

18—Appointment book of Mr. Perlman, New York Central President. *Objection sustained.*

19, 20—Printed transcript of hearings before Senate

Committee involving Mr. Cross. *Objection sustained.*

21—Union League Club of Chicago records showing Mr. Cross' visits. *Objection sustained.*

34—Chicago Athletic Association records and pages from magazine concerning parties by Mr. Ben Regan. *Objection sustained,* except Chicago Athletic Association Exhibit 1, to which no objection has been made.

35—Document concerning Parmelee charges paid by each of Chicago terminal lines when Parmelee was transfer agent. *Objection overruled.*

36—Documents concerning transfer contract negotiations. *Objection overruled.*

38—Illinois Bell Telephone Company records concerning calls charged to defendant Keeshin. *Objection sustained.*

40—Letter from Mr. Fawcett of New York Central and Mr. Jenks of Rock Island to Parmelee, and others. *Objection overruled.*

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41—Le Seuer Exhibit 1. Mimeographed letter. *Objection overruled.*

L.S. 2. Excerpts from report on June 3, 1955 meeting. *Objection overruled.*

L.S. 3-4. Correspondence concerning Nickel Plate contract with Parmelee. *Objection overruled.*

L.S. 5. Internal Nickel Plate memorandum. *Objection overruled.*

L.S. 6. Letter concerning transfer of passengers at Englewood Station. *Objection overruled.*

L.S. 7. Notes made after termination of Parmelee Service, containing a reference to the Senate investigation. *Objection overruled.*

42—Affidavits of Mr. Gurley (Santa Fe President) furnished to Senate Committee. *Objection sustained.*

43—Soo Line memoranda. *Objection overruled.*

44—Keeshin Exhibits 1-5. Subpoenas and telegrams re Senate Committee. *Objection sustained.*

K. 8. Confirmation from Litsinger of purchase of vehicles by Keeshin. *Objection overruled.*

K. 9. Concerns operations after October 1, 1955. *Objection overruled.*

K. 15-A. *Objection overruled.*

K. 16-16C. *Objection overruled.*

K. 17-17B. *Objection overruled.*

K. 20. *Objection overruled.*

K. 21. June 15, 1955, memorandum, Keeshin to Baxter, re preparation for take-over. *Objection overruled.*

K. 22. Anonymous letter. *Objection sustained,* on defendants' representation that letter is anonymous.

K. 23. Keeshin memorandum. *Objection overruled.*

K. 24. Letter, Litsinger to Keeshin. *Objection overruled.*

K. 25-26. Communications, Litsinger to Senate Committee. *Objection sustained.*

K. 27. Sale contract, Fruehauf Trailer to Railroad Transfer. *Objection overruled.*

K. 28. November 4, 1955, Railroad Transfer Service Memorandum. *Objection overruled.*

K. 29-30D, 32-32B. Communications re formalizing contract between Railroad Transfer Service and Chicago Terminal Lines. *Objection overruled.*

K. 31-31A. Re pickup and delivery rates. *Objection overruled.*

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K. 33-35. Memoranda Baxter to Keeshin, respecting C. A. Conklin Truck Line, Inc. operations. *Objection overruled.*

K. 36. Order of Illinois Commerce Commission concerning Conklin. *Objection sustained.*

K. 37-37C. Keeshin memoranda. *Objection overruled.*

K. 38. June 21, 1955, Keeshin memoranda. *Objection overruled.*

K. 39. Re formalizing Railroad Transfer Service-Conklin Truck Line contract. *Objection overruled.*

K. 40-40A. Notes. *Objection overruled.*

K. 41-41B. Memorandum, Kazanow to Keeshin. *Objection overruled.*

K. 42, 43, 44, 45. Letters re labor relations and labor contracts concerning Railroad Transfer Service employees. *Objection overruled.*

K. 46-50. Documents relating to equipment purchases by Railroad Transfer Service award of contract. *Objection overruled.*

K. 51. Documents re baggage pickup and delivery service charges by Railroad Transfer Service. *Objection overruled.*

K. 52, 53, 56. Correspondence with interstate Commerce Commission re Conklin. *Objection sustained.*

K. 54, 55. Keeshin memoranda. *Objection overruled.*

K. 57, 58. Baxter memoranda re meetings between Keeshin and committee of six on May 19 and June 3, 1955. *Objection overruled.*

K. 59. Printed wage contract. *Objection overruled.*

K.60-61. Documents concerning transactions between Keeshin and Marshall Field in summer of 1955. *Objection overruled.*

K. 62. Tabulation of dollar amounts of transactions between Truck Rail Terminal Inc. and certain Chicago terminal lines. *Objection overruled.*

45, 46, 47—Applications for certificates of title filed by Railroad Transfer Service with Secretary of State. *Objection sustained.*

48—Letter Mr. Goldstein to Mayor Daley, dated September 24, 1955. *Objection overruled.*

49—Annual reports of defendant railroads to stockholders for 1954 and 1955. *Objection overruled.*

50, 51, 52, 53, 54, 55, 56—Documents relating to transactions of Carrollton Farm Supply Co. and son of defendant Cross. *Objection sustained.*

57—Santa Fe Exhibits 1-3. Senate Committee telegrams and subpoena to Mr. Gurley. *Objection sustained.*

S.F. 4-9. Re matters after Railroad Transfer Service take-over of service on October 1, 1955. *Ob-*
738 *jection overruled.*

S.F. 10. Memo, Duffy to Gurley. *Objection overruled.*

S.F. 29-36. Re formalizing contract between Railroad Transfer Service and Conklin Truck Line. *Objection overruled.*

S.F. 37-85. Memoranda and notes. *Objection overruled.*

S.F. 90-94. Re proposed terminal charge to cover transfer service. *Objection sustained.*

S.F. 95-99. Memoranda. *Objection overruled.*

S.F. 100-124. Re matters after take-over on October 1, 1955. *Objection overruled.*

58—Baltimore & Ohio Exhibits 1-12. June and July 1955, memoranda. *Objection overruled.*

B & O 13, 14. Memorandum re June 13, 1955, meeting. *Objection overruled.*

B & O 15-17. 1933 correspondence. *Objection overruled.*

B & O 18-20. Memorandum on June 3, 1955, meeting. *Objection overruled.*

B & O 21-22. Memorandum on June 2, 1955, equipment inspection. *Objection overruled.*

B & O 23-25. Memoranda. *Objection overruled.*

B & O 26-32. Parmelee annual report. *Objection overruled.*

B & O 33-42. Dunn & Bradstreet report on Keeshin. *Objection overruled.*

B & O 43-70. Memoranda. *Objection overruled.*

B & O 71-76. Re matters during take-over. *Objection overruled.*

B & O 79-102. Notes and memoranda. *Objection overruled.*

B & O 106-117. Notes and memoranda. *Objection overruled.*

B & O 118-147. Re procedures after take-over. *Objection overruled.*

B & O 148-149. Memoranda. *Objection overruled.*

B & O 150-151. Re matters on take-over. *Objection overruled.*

B & O 152. Draft of a press release. *Objection overruled.*

B & O 153-157. Memoranda. *Objection overruled.*

B & O 158-178. Formal Railroad Transfer Service Inc. agreement of Octover 1, 1955. *Objection overruled.*

B & O 179-190. Memoranda of September, 1955, re matters connected with take-over. *Objection overruled.*

B & O 191-209. Re formalizing contract. *Objection overruled.*

B & O 210-214. August, 1955 notes and memoranda re routine of take-over. *Objection overruled.*

B & O 215. Memorandum re Parmelee labor problems. *Objection overruled.*

B & O 282-294. Re matters after take-over. *Objection overruled.*

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9—Northwestern Railway Exhibits 1-4. Memorandum Brennan to Feucht reviewing history of negotiations and considerations re changing from Parmelee to Railroad Transfer. *Objection overruled.*

N.W. 5-7. *Objection sustained* on defendants' representation that documents relate to Senate Committee Investigation.

N.W. 8, 16. Memorandum by Feucht reporting phone call with Cross. *Objection overruled.*

N.W. 9. Memorandum. *Objection overruled.*

N.W. 10. Clipping from Chicago Tribune. *Objection sustained.*

N.W. 11-15, 16A-17, 21-22, 24-25. Memoranda Small to Feucht. *Objection overruled.*

N.W. 48-53. February, 1946, report re investigation of Parmelee charges. *Objection overruled.*

N.W. 61-63. Report Small to Feucht on June 13 meeting. *Objection overruled.*

N.W. 64. Memorandum Brennan to Norton. *Objection overruled.*

N.W. 68-69. Memorandum Small to Feucht. *Objection overruled.*

N.W. 70-74. Memorandum Brennan to Small. *Objection overruled.*

N.W. 75 and 141. Copies Feucht memoranda of Cross conversation. *Objection overruled.*

N.W. 76-78. Memoranda. *Objection overruled.*

N.W. 79. Memorandum Small to Feucht. *Objection overruled.*

N.W. 80, 81, 83, 88, 90-97. Memoranda. *Objection overruled.*

N.W. 82, 87, 90. Memoranda Small to Feucht. *Objection overruled,* subject to examination.

N.W. 130-140. Memoranda. *Objection overruled.*

N.W. 142, 143, 146. Memoranda. *Objection overruled.*

N.W. 147. Memorandum Small to Feucht. *Objection overruled.*

N.W. 148-157. Memoranda. *Objection overruled.*

N.W. 161. May 25, 1955, telegram Cross to Feucht. *Objection overruled.*

N.W. 162. Re formalizing contract. *Objection overruled.*

N.W. 163-164. Re take-over procedures. *Objection overruled.*

N.W. 165. Re matters after take-over. *Objection overruled.*

N.W. 166. June 3, 1955, report Brennan to Norton. *Objection overruled.*

N.W. 167-197. Report Winkler and Padrick to railroad representatives. *Objection overruled.*

N.W. 198-199. Letter Seddal to Mayor Daley. *Objection overruled.*

N.W. 200. Communication Padrick to negotiating committee. *Objection overruled.*

N.W. 201-202. Letter Padrick to Chicago vehicle commissioner. *Objection overruled.*

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N.W. 203-208. Re procedures on take-over. *Objection overruled.*

N.W. 220-222. Memoranda and notes. *Objections overruled.*

N.W. 224-288. Re matters after take-over. *Objection overruled.*

N.W. 289-291B. Re change-over matters. *Objection overruled.*

N.W. 292-319. Re matters following take-over. *Objection overruled.*

N.W. 320-327. Memorandum on Parmelee service history. *Objection overruled.*

N.W. 328. Memorandum Brennan to Poulson. *Objection overruled.*

N.W. 329-335. Re baggage reports in March, 1954. *Objection overruled.*

N.W. 336. Re matters after take-over. *Objection overruled.*

N.W. 337-355. Memoranda and notes. *Objection overruled.*

N.W. 356-369. Re operations after take-over. *Objection overruled.*

60—Pennsylvania Railroad Exhibits 4-5. Memorandum on release of news of awarding of contract to Railroad Transfer. *Objection overruled.*

P 17-25, 27. Memoranda. *Objection overruled.*

P 26, 29-34, 36. Re matters after take-over. *Objection overruled.*

P 35. Note. *Objection overruled.*

P. 37. Memorandum on take-over. *Objection overruled.*

P 38-61. Memoranda. *Objection overruled.*

P 43A. Clipping from Chicago Daily News. *Objection sustained.*

P 62-66. Re matters after October 1, 1955. *Objection overruled.*

61—Illinois Central Exhibits J 1-3. Memoranda Trovillion to Johnston. *Objection overruled.*

I.C. 13-14. Memorandum re take-over. *Objection overruled.*

I.C. 15-27. Memoranda. *Objection overruled.*

I.C. 28-29. Notes re June 3, 1955, phone conversations. *Objection overruled.*

I.C. 29a and 29b. Notes made at June 3 meeting. *Objection overruled.*

I.C. 31, 38-41. Memoranda. *Objection overruled.*

I.C. 44. Copy of news item on labor wage agreement. *Objection sustained.*

I.C. 45-47, 52-55, 60. Memoranda. *Objection overruled.*

I.C. 61. Copy letter Padrick to Keeshin. *Objection overruled.*

I.C. 63-72. Memoranda. *Objection overruled.*

I.C. 73. Letter relative to settlement of alleged Parmelee deficit in 1954. *Objection overruled.*

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I.C. 74-79. Memoranda. *Objection overruled.*

I.C. 80-108. Re matters after October 1, 1955. *Objection overruled.*

I.C. 109. Letter re interpretation of a clause of the Railroad Transfer agreement. *Objection overruled.*

I.C. 110. Memorandum on take-over of service. *Objection overruled.*

I.C. 112. Memorandum on giving service if Railroad Transfer service is interrupted. *Objection overruled.*

I.C. 113. Memorandum re take-over. *Objection overruled.*

I.C. 114-153. Re formalizing of agreement. *Objection overruled.*

I.C. 154-156. Memoranda. *Objection overruled.*

I.C. 157. Copy of communication by Parmelee to its employees. *Objection overruled.*

I.C. 158-166. Memoranda. *Objection overruled.*

I.C. 167. Memoranda. *Objection overruled.*

I.C. 168-196. Re matters after October 1, 1955. *Objection overruled.*

I.C. 197-198. Copy of Padrick letter to Chicago Vehicle Commissioner. *Objection overruled.*

I.C. 199-200, 202. Re routine after take-over. *Objection overruled.*

I.C. 201, 203. Re routine during take-over. *Objection overruled.*

I.C. 204. Re routine of Parmelee service. *Objection overruled.*

I.C. 205-208. Notes. *Objection overruled.*

62—New York Central Exhibit 2. Tribune news article on change of transfer service. *Objection sustained.*

N.Y.C. 1. Memo transmitting Exhibit 2. *Objection sustained.*

N.Y.C. 3-4. Published baggage tariff. *Objection overruled.*

N.Y.C. 6, 37-44, 49-58, 63, 68-72, 90-92, 192, 228-232, 251, 256, 263, 265-267, 313, 340-341. Memoranda. *Objection overruled.*

N.Y.C. 9-10, 11-15, 16-20, 21-22, 25, 27, 47, 49, 79, 149. Re change-over from Parmelee to Railroad Transfer Service. *Objection overruled.*

N.Y.C. 23, 24, 28-34. Re formalizing contract. Objection *overruled.*

N.Y.C. 26-35, 48, 59-62, 64, 93, 150-151, 160-161, 172, 176-185, 202, 203-205, 327-329, 342. Re routine of Parmelee operations. *Objection overruled.*

N.Y.C. 36. Daily News item re change of service. *Objection sustained.*

N.Y.C. 45, 46, 221-227, 275, 297-299, 304, 316, 323. Memoranda. *Objection overruled.*

N.Y.C. 73-76, 145-148, 193-201, 233-236, 343-345, 349-352. Re matters after take-over. *Objection overruled.*

N.Y.C. 77-78. Re 1940-41 proceedings. *Objection overruled.*

N.Y.C. 80-87. Transportation notice of May 26, 1955, and correspondence re group movements of Boston Red Sox. *Objection overruled.*

742 N.Y.C. 94-134. Notes of Bone re meetings of sub-committee of six railroads, not from New York Central files. *Objection overruled.*

N.Y.C. 162-171, 317-322. Re proposed transfer charge to be included in through ticket charge. *Objection sustained.*

N.Y.C. 237-242, 300-302. Re Senate Committee investigation of Cross. *Objection sustained.*

N.Y.C. 243-248, 249-250, 252-253, 264, 277-283, 346. Notes and memoranda. *Objection overruled.*

N.Y.C. 285-296. Correspondence and memoranda re 1951 study of transfer service. *Objection overruled.*

N.Y.C. 277-282 (second set). Re Chicago transfer proposals of May 20 to June 20, 1955, and recommendations. *Objection overruled.*

N.Y.C. 283-284 (second set). Duplication of N.Y.C. 68-69. *Objection overruled.*

N.Y.C. 285-289 (second set). Memoranda re Parmelee operations. *Objection overruled.*

N.Y.C. 290-295. 1956 memoranda and correspondence. *Objection overruled.*

N.Y.C. 296-297. Memoranda. *Objection overruled.*

N.Y.C. 298. Chicago Tribune article. *Objection sustained.*

N.Y.C. 299. Chicago Daily News article. *Objection sustained.*

N.Y.C. 300-303. Re routine of change-over of service. *Objection overruled.*

N.Y.C. 186-188, 265-266, 307, 308-309, 310-312, 314, 315, 324-326, 330-332, 333, 334, 335-337, 347, 348, 349. Documents objected to under other numbers. Rulings as for the lower numbered duplicate items.

63—Western Passenger Association Exhibits 2-5, 12. Proceedings of meetings of Chicago terminal lines re proposed Chicago terminal transfer charge to be included in through-ticket charge. *Objection sustained.*

W.P.A. 8. Proceedings of Chicago terminal lines, including references to Parmelee coupon rates. *Objection overruled.*

W.P.A. 71-78, 121-124, 127. Re matters subsequent to take-over. *Objection overruled.*

W.P.A. 152-153. Re negotiations for formalizing contract. *Objection overruled.*

W.P.A. 185-186, 189, 191-193. Re matters subsequent to take-over. *Objection overruled.*

W.P.A. 195. Re terminal charge proposal. *Objection sustained.*

W.P.A. 196-204. Re change-over matters. *Objection overruled.*

W.P.A. 205-208. Re matters after take-over. *Objection overruled.*

W.P.A. 209. Re matters on change-over. *Objection overruled.*

W.P.A. 210-211. Re adjusting Parmelee charges on transfer of the remains. *Objection overruled.*

W.P.A. 215-225, 229. Re matters after take-over. *Objection overruled.*

W.P.A. 226, 230. Re matters on change-over. *Objection overruled.*

W.P.A. 232-236. Re matters after take-over. *Objection overruled.*

W.P.A. 237-243. Re matters of change-over. *Objection overruled.*

W.P.A. 245-246, 248-249. Re accounting on transfer of remains. *Objection overruled.*

W.P.A. 247. Re proposed terminal charge. *Objection sustained.*

W.P.A. 250-265. *Objection overruled.*

W.P.A. 266-271. Re proposed terminal charge. *Objection sustained.*

W.P.A. 272-273. *Objection overruled.*

W.P.A. 274-280, 286. Re matters after take-over. *Objection overruled.*

W.P.A. 287. Re Parmeelee charges after take-over. *Objection overruled.*

W.P.A. 288-289, 296. Re matters on change-over. *Objection overruled.*

W.P.A. 290-291. Re charge for clergy. *Objection overruled.*

W.P.A. 294-295. Re proposed lawsuit respecting Chicago city ordinance. *Objection overruled.*

W.P.A. 297. Re matters after take-over. *Objection overruled.*

W.P.A. 298-300. *Objection overruled.*

W.P.A. 312-320. Re matters on change-over and re formalizing contract. *Objection overruled.*

W.P.A. 321-324. Re dealings with Parmelee in July, 1955. *Objection overruled.*

W.P.A. 325-326, 327-329H, 349A, 398-419. *Objection overruled.*

W.P.A. 360. Re proposed terminal charge. *Objection sustained.*

W.P.A. 420-425. Re matters after take-over. *Objection overruled.*

W.P.A. 426-437. Re matters on take-over and re formalizing contract. *Objection overruled.*

W.P.A. 439-441, 443, 447-451, 454-466. Re matters after take-over. *Objection overruled.*

W.P.A. 442, 444-446, 453, 467, 469. Re matters after take-over. *Objection overruled.*

W.P.A. 470-502, 511. Re formalizing contract. *Objection overruled.*

W.P.A. 503, 508-510, 514-518. Re matters involved in change-over. *Objection overruled.*

W.P.A. 519. Re 1954 arrangement for transferring passengers to and from Englewood Station. *Objection overruled.*

744 W.P.A. 520. Re 1954 arrangement for transfer of baggage where margin of time less than 3 hours. *Objection overruled.*

W.P.A. 521-526, 559. Re routine of formalizing contract. *Objection overruled.*

W.P.A. 531-546. Re negotiations with Railway Express in 1948-49. *Objection overruled.*

W.P.A. 553-554. Markin letter, telling of extra Parmelee services rendered without charge. *Objection overruled.*

W.P.A. 557-558. Parmelee letter re alleged investment of $2,320,000 and 1947-48 operating results. *Objection overruled.*

W.P.A. 561-562. Re matters after take-over. *Objection overruled.*

W.P.A. 564-566. Letter from Senate Committee returning documents. *Objection sustained.*

W.P.A. 567, 569, 573-575, 577-588, 598, 601, 689, 711-712. Re proposed terminal charge. *Objection sustained.*

W.P.A. 568. Re reducing Parmelee operating cost by limiting service. *Objection overruled.*

W.P.A. 570. Report on payments to Parmelee and of coupons not picked up. *Objection overruled.*

W.P.A. 571-572. Routine on Parmelee service in 1944. *Objection overruled.*

W.P.A. 592-593. Re routine after take-over. *Objection overruled.*

W.P.A. 594-595. Re passenger complaint in 1947. *Objection overruled.*

W.P.A. 596-597, 662, 673-678, 689, 714-715. Re Parmelee service routine. *Objection overruled.*

W.P.A. 599, 692. Re take-over routine. *Objection overruled.*

W.P.A. 717-718. Litsinger affidavit re Keeshin purchases. *Objection overruled.*

W.P.A. 719. Litsinger letter re loan of station wagons for testing. *Objection overruled.*

W.P.A. 720. Trimmel statement re return to Litsinger of two loaned station wagons, prepared for and sent to Senate Committee. *Objection sustained.*

W.P.A. 721-723. Re routine after take-over. *Objection overruled.*

64—LaSalle Street Station Exhibits 1-10. Re matters after take-over. *Objection overruled.*

LaS. 11, 12. Memoranda. *Objection overruled.*

65—Chicago Union Station Exhibits 1-10. Memoranda. *Objection overruled.*

C.U.S. 11, 12. Re matter after take-over. *Objection overruled.*

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66—Wall Street Journal clipping. *Objection sustained.*

67—Proceedings of meetings of Chicago terminal lines re Railway Express proposal to take over transfer of baggage, and re possibility that a railroad may wish to make an individual contract arrangement with Parmelee. *Objection overruled.*

Proceedings of other meetings. *Objection overruled*, except that *objection* is *sustained* concerning proposed charge to be included in through ticket charge.

68—Copy of agreement between Parmelee and the Nickel Plate. *Objection overruled.*

69—Letter Bone to Markin re radio announcement congratulating Parmelee on its 100th anniversary. *Objection sustained.*

70—Letter Siddall to Johnston re Parmelee. *Objection overruled.*

71—Letter Padrick to Markin. *Objection overruled.*

72—Memorandum Holt to Comer. *Objection overruled.*

73, 74, 75, 76, 77, 78, 79. Letters of congratulations from employees of defendant railroads to Parmelee on 100th anniversary. *Objection sustained.*

80—Letter Coleman to Scheeder complimenting Parmelee on transfer of service men. *Objection overruled.*

81—Letter Baird to Markin commenting on Parmelee's proposal. *Objection overruled.*

82—Letter Bruce to Markin thanking Markin for luncheon. *Objection sustained.*

83—Code of Ethics for Practitioners before the Interstate Commerce Commission. *Objection sustained.*

84—69th Annual Report of Illinois Commerce Commission. *Objection sustained.*

85—Organization minutes of Illinois Commerce Commission. *Objection sustained.*

86-94—Decisions of Illinois Commerce Commission and transcript of part of oral argument before Commission in one case. *Objection sustained.*

In brief, the above rulings generally hold that:

(1) The documents referred to by paragraph 1 of defendants' Motion In The Alternative are inadmissible.

(2) The documents referred to by paragraph 2 of defendants' said Motion are inadmissible.

(3) The documents referred to by paragraph 3 of defendants' said Motion are inadmissible.

(4) The documents referred to by paragraph 4 of defendants' said Motion are inadmissible.

(5) The documents referred to by paragraph 5 of defendants' said Motion are inadmissible.

(6) The documents referred to by paragraph 6 of defendants' said Motion are not inadmissible and may be tendered for ruling on admissibility at the trial in accordance with the limitations hereinbefore set forth by the Court.

(7) The documents referred to by paragraph 7 of defendants' said Motion are not inadmissible and may be tendered for ruling on admissibility at the trial in accordance with the limitations hereinbefore set forth by the Court.

(8) The documents referred to by paragraph 8 of defendants' said Motion may not be inadmissible and may be tendered for ruling on admissibility at the trial in accordance with the limitations hereinbefore set forth by the Court.

(9) The documents referred to by paragraph 9 of defendants' said Motion are inadmissible.

(10) The documents referred to by paragraph 10 of defendants' said Motion are inadmissible.

(11) The documents referred to by paragraph 11 of defendants' said Motion are inadmissible.

Dated: Dec. 4, 1959

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IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

748 MEMORANDUM AND ORDER.

(Filed March 10, 1960)

On January 6, 1960, this court heard oral argument upon objections to the rulings on admissibility of documents contained in its *Memorandum* dated December 4, 1959. In view of the nature and severity of the arguments advanced, the court deems it necessary to review the entire proceedings and refer to the transcript. The instant *Memorandum and Order* constitute the court's rulings on all points raised by the parties on January 6.

Summary of Proceedings and Documents Filed.

By Order entered August 1, 1958, this court ordered the parties to (1) file lists of the documents they respectively intended to offer into evidence at trial of the cause, (2) file "their objections to the admission in evidence of documents appearing on lists submitted by opposing parties," and (3) be prepared to present and argue at a pre-trial conference set for November 17, 1958, "all questions of evidence and scope of proof which they believe will or may arise during the trial of the case."

Plaintiff's *List of Documents*, filed September 25, 1958, explicitly purports to be a "list of documents which plaintiff presently intends to offer in evidence at the trial of this cause." On November 4, 1958, the defendant railroads 749 and railroad presidents filed their *Objections to Documents Included in Plaintiff's List*. In their opening paragraph, these defendants "object to the admissibility of the following documents on the grounds stated." There follows defendants' descriptions of thousands of documents referred to in or by the numbered paragraphs of plaintiff's "List of Documents," and the grounds upon which their objections lie. These Objections were adopted as their own by defendant Cross on November 3, 1958, and by defendants Keeshin and Railroad Transfer Service, Inc., on November 5, 1958.

On January 30, 1959, the defendant railroads and railroad presidents filed their *Motion to Strike Plaintiff's List of Documents and in the Alternative for Pre-Trial Rulings*. The alternate portion of the Motion requested (1) broad rulings that *all evidence*, documentary and otherwise, be excluded as inadmissible concerning ten matters of fact from which defendants anticipate the jury would be urged by plaintiff to infer the conclusion that the alleged conspiracy existed, and (2) a ruling that *documents* concerning telephone calls are inadmissible unless there is other evidence indentifying those calls with the subject matter

of the case. Defendants Keeshin and Railroad Transfer Service, Inc., adopted the said Motion as their own on February 11, 1959, so, too, did defendant Cross on March 4, 1959.

The *brief* filed by defendant railroads and railroad presidents on January 30, 1959, in support of their motion, 750 refers (at page 5) not only to their "alternative motion * * * for certain pre-trial rulings on matters of evidence," but also to "plaintiff's existing list [of documents] and the objections thereto." Plaintiff filed its *Memorandum in Opposition* on April 7, 1959, stating (at pages 3-4) that before trial the court "could reasonably dispose of" "such questions as authenticity or competency of documents."

Defendant railroads and railroad presidents in their *Pre-Trial Reply* memorandum filed April 27, 1959, identify their January 30 Motion as one to strike plaintiff's list of documents or "in the alternative for pre-trial rulings with respect to the admissibility of certain groups of the listed documents and for other relief" (at page 3), and as one "for rulings on admissibility of specified documents" (at page 4). On April 28, 1959, this brief was adopted as their own by defendants Keeshin and Railroad Transfer Service, Inc., and defendant Cross filed his reply brief, also joining in that of the other defendants.

A pre-trial conference was held by Judge Robson (to whom the case was reassigned in December, 1959) with the parties on May 11, 1959. Additional briefs were authorized by order.

Plaintiff filed its *Supplemental Memorandum in Objection to Defendants' Motions for Pre-Trial Rulings* on July 17, 1959. In it, plaintiff states that "relevant and 751 competent" evidence must be admitted into evidence (at page 4), that "this Court has a right to put reasonable limits on evidence which is merely cumulative" (at

page 7), and that "It would be improper for the court at this stage to attempt to rule upon the relevance and materiality of these areas of proof" (at page 36).

On August 11, 1959, defendants filed their *Reply to Plaintiff's Supplemental Memorandum*. At page 18 thereof, it is stated that "the issues [before the court] are presented by the detailed 'objections of Defendant Railroads and Railroad Presidents to Documents Included In Plaintiff's List' filed November 3, 1958, and by our 'Motion for Pre-Trial Rulings' filed January 29, 1959."

By order entered November 12, 1959, on motion of the defendant railroads and railroad presidents, this court directed that the transcript of the May 11, 1959, pre-trial hearing before Judge Robson be filed. The transcript was filed on February 26, 1960.

Plaintiff's Contention Concerning the Court's December 4 Memorandum.

(1) At the January 6, 1960, hearing, plaintiff argued that the court "has been misled, misinformed, and imposed upon" (Transcript, at 6; see also Tr. 52, 64-65); that the court "didn't intend it, and you have been misled" (Tr. 40); that the court has excluded documents "under a misapprehension and a description that is not accurate" 752 (Tr. 51); that the court has "a sardonic sense of humor" (Tr. 52); and that the court's rulings were "the result of a misapprehension of what was involved here" (*Ibid.*).

The court is unable to find any basis for these charges. The purpose of rules which authorize responsive briefs is to afford parties sufficient opportunity, not only to present to the court their respective positions, arguments and opinions, but also to demonstrate any fallacies in those of their opponents.

(2) Plaintiff's counsel argues that the court was not presented with the issue of "the admissibility of individual

documents" (Tr. 46, 47, 57); that the plaintiff believed that the Order of August 1, 1958, was "an accomodating order, to both parties, to make available the outside limits of the documents that would be produced at the trial with no surprise" (Tr. 46); that "the only issue presented to your Honor was an issue in a motion [of January 30, 1959] by the railroad defendants. • • • In this motion and in the supporting memoranda there was no discussion of the individual documents" (Tr. 47); that "the plaintiff never even argued these objections that were made to documents" (Tr. 48-49); that "The real purpose [of the August 1, 1958, Order] was if there was an objection to the genuineness of a document, this could be resolved in pre-trial" (Tr. 49); that "We didn't make a mass offering of these documents as your order would indicate" (*Ibid.*; see also Tr. 50, 59); that "We submitted a list of documents under various headings for the convenience of counsel to tell them what information we had" (Tr. 58); that plaintiff did not "make a blanket offer of documents" (Tr. 71); and that "All I want is the right to offer evidence" (*Ibid.*; see also Tr. 72).

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An examination of the documents on file in this cause demonstrates that the court was, in fact, presented with the issue of the admissibility of individual documents. The basic purpose of the order of August 1, 1958, insofar as it concerned documents, was to provide a means by which the admissibility of documents would be assessed prior to trial. Plaintiff has represented to the court that it intends to offer each and every document identified in its "List of Documents." That plaintiff has not yet actually offered these documents for admission into evidence is irrelevant. The court in its December 4, 1959, Memorandum has assessed the admissibility of the documents heretofore intended to be offered into evidence by plaintiff.

(3) Plaintiff's counsel argues that the court did not see or examine "a single one of these documents. • • • [T]he

documents are not even adequately described" (Tr. 48); that the documents "have been identified by the plaintiff only by number to facilitate preparation for trial" (Tr. 5); and that the court's rulings "could not be a matter of judicial determination but clairvoyance. • • • I could
754 not determine and identify these documents with any care in less than six months or three months, after I have worked with them for many years, as there are so many and they are so diverse" (Tr. 50).

It is not necessary that the court personally examine each document the admissibility of which is being tested. The court has the right and the power to rely on the parties' descriptions of those documents, so long as their descriptions are in accord and do not conflict. Especially must this principle apply in a case where the documents proposed to be offered are admittedly so numerous and so diverse. If plaintiff had desired to take issue with any of the defendants' descriptions it had ample opportunity to do so. This court would certainly have granted plaintiff whatever reasonable time extension might have been requested in order for a proper response to any of defendants' descriptions.

(4) Plaintiff's counsel argues that the court did not limit its examination concerning admissibility of documents to the specific grounds stated by defendants in support of their objections, and its rulings "go beyond the defendants' objections" (Tr. 53 62; see also Tr. 33, 44); that the court failed to conclude that "There are no reasons • • • why [documents ruled inadmissible] can be excluded" (Tr. 33); and that the court went "completely beyond the defendants' position" (Tr. 55).

755 When the court is presented with an objection to the admissibility of documents, the court has the power to exclude them on any ground that renders them inadmissible. The court is not limited to a consideration only of the

specific grounds asserted by an objecting party in support of its objection to admissibility. The court's ruling cannot be impeached by a contention that the court applied a rule of law other than one on which the objector predicates his objection.

(5) Plaintiff's counsel argues that the court has no power to make pre-trial rulings that documents are inadmissible (Tr. 61); that the defendants' objections were predicated "largely on materiality and relevancy" (Tr. 48); that "We should not be subjected to rulings in advance of trial on materiality and relevancy" (Tr. 61; see also Tr. 49); and that "there should not be any final determination of relevancy and materiality" (Tr. 59).

Plaintiff apparently misconceives the functions and purposes of pre-trial conferences, hearings and rulings. Particularly in protracted, prolonged and involved litigation, it is necessary that a determination be made as to the issues to be tried and the propriety of the evidence proposed to be introduced on those issues. Such determination, as all rulings of the court must be, are final and binding upon the parties while they are in that court.

(6) Plaintiff's counsel argues that the court failed to admit documents under the "broad avenue of proof 756 known as admissions against interest" (Tr. 31); and that counsel for defendants conceded at the May 11, 1959, pre-trial conference that "we can use them as admissions against interest" (Tr. 56; see also Tr. 63).

Documents designated as admissions against interest are nevertheless subject to the general rules of evidence. To be admissible, they may not be based on rumor, opinion or speculation, be irrelevant, have an immaterial bearing on the issues in the case, be secondary to accessible primary evidence, and so on. The rule pursuant to which a document may be characterized as an admission against interest is an exception to and cures only one evidentiary defect—

that of hearsay. If it is subject, too, to attack on another ground, it remains inadmissible.

(7) Plaintiff's counsel contends that the court has limited "our liability to discover evidence [and] our ability to establish proof" (Tr. 39); that the court has excluded all "the proof which has to do with those allegations" of the complaint to which such proof relates (Tr. 69); and that plaintiff has been "precluded from whole areas" (Tr. 70).

When documents appear to be clearly inadmissible, the consequences of their exclusion upon the final disposition of the merits are factors of which the court cannot concern itself. Plaintiff is not prohibited from offering any admissible proof on the issues properly to be tried.

757 (8) Plaintiff's counsel argues that "the Court enjoins us, the plaintiff, not to tender these documents [that the court regards as inadmissible] at the trial, and then says that for impeachment purposes only they may be utilized with the court's approval if a specific fact is to be contradicted by this document patently and explicitly and not by inference or implication" (Tr. 5; see also Tr. 42, 44, 48, 56); and that "we can't even tender and offer the evidence which is in the complaint" (Tr. 70).

As to this objection, the court does not intend to engage in further discussion relevant to the consequences of its well-considered rulings.

(9) Plaintiff's counsel argues that the court by excluding documents "destroys our opportunity for a jury trial [and is] usurping the authority that should be with the jury to determine what inferences lie in this proof" (Tr. 44).

This contention is obviously frivolous. The court's rulings on admissibility of documents or evidence apply without regard to whether the case will be tried to a jury or to the court.

(10) Plaintiff's counsel argues that the court failed to consider and follow the pre-trial statements of Judge Robson, who "had committed himself as to how he was handling the matter" (Tr. 66; see also Tr. 66, 68, 62).

I am unable to find any basis for plaintiff's conten-
758 tion that Judge Robson "committed himself" or any orders to that effect. Nor is there any inconsistency between his remarks and the rulings now made.

(11) Plaintiff has also excepted to the court's rulings concerning certain specific items. For the most part, its contentions concerning these items are desribed in one or more of the ten "complaints" set forth above with quotations in this memorandum. These items are identified by the plaintiff in oral argument as:

(a) Code of ethics (Tr. 24)
(b) Statement by Mr. Morehouse (Tr. 24)
(c) Gurley affidavit (Tr. 30)
(d) Documents concerning Cross purchase of Deerfield house (Tr. 33-34, 62-63)
(e) Records of telephone calls from Forgash to Cross, from Forgash to Keeshin, from Keeshin to Carrolton, Illinois, from Keeshin to Cross (Tr. 39, 42)
(f) Details of Baltimore and Ohio financing matter (Tr. 43)
(g) Keeshin memoranda K-54, 57, 58, 60 and 61 (Tr. 50-51)
(h) Telephone records of Cross concerning calls to Keeshin and to railroad presidents (Tr. 51)
(i) Item No. 22, Exhibits 3 and 6 (Tr. 52)
(j) Forgash Exhibit 1 (Tr. 52).
(k) Ryan Exhibit 1 (Tr. 52)
(l) Item No. 4, Simpson's appointment book and Simpson's secretary's appointment book (Tr. 53)
(m) Johnston telegram (Tr. 54-55)

(n) Union League Club registration slips (Tr. 55)
(o) Senate transcript (Tr. 55-56)
(p) Documents concerning house sold by Cross (Tr. 62-63)

The court notes plaintiff's contention, made for the first time at the January 6, 1960, hearing that items identified under (g) were not included in "Plaintiff's List of Documents". Although plaintiff's suggestion is tardy
759 by approximately one year, the court has examined plaintiff's "List" and concludes that defendants' objections to admissibility of the said documents should have been stricken rather than overruled.

The court also notes plaintiff's new contention that the items identified under (h) were misdescribed by defendants in their "Objections to Documents Included in Plaintiff's List". Counsel for defendants has by letter (with the notation thereon that a copy was being sent to plaintiff's attorney) advised the court that plaintiff's said contention is correct, and that the said items were, in fact, so misdescribed. The court rules that defendants' objections to admissibility of the documents heretofore described in the court's memorandum as "Telephone company records of Baltimore & Ohio toll charges" are stricken. There is, however, a general objection by defendants to the admissibility of documents concerning telephone calls. That objection is sustained as to the said items as now properly described.

Defendants' Contentions Concerning the Court's December 4, Memorandum

Defendants' argument concerning the Court's December 4 memorandum discloses the following to be their contention:

760 "We have asked to have those five areas of evidence excluded, and your Honor has excluded all of

them by ruling that the documents are not admissible. That is a limited ruling your Honor made, because he was thinking of the objections to the documents and didn't have in mind the comprehensive motion that we made for these area rulings on evidence." (Tr. 87; see also Tr. 89-90, 92, 96).

This court has not excluded any "areas" of proposed evidence by its rulings on the admissibility of documents, except as such "areas" may be legally affected by these rulings.

761 ORDER

The court has re-examined with great care the motions, briefs, memoranda and other documents filed by all parties and the orders and rulings heretofore entered by the court.

The court has examined each and every contention of all parties with respect to the memorandum dated December 4, 1959, and has afforded counsel for all parties full opportunity to present and argue their respective contentions.

It Is Hereby Ordered that the rulings made in the *Memorandum* dated December 4, 1959, insofar as they are not specifically changed by the court's statements hereinabove, shall stand and shall govern the tender of the subject documents at the trial of this cause. The said *Memorandum*, together with this, shall be filed and entered instanter as the Order of this court.

The cause has been set for trial on April 4, 1960, pursuant to oral stipulation of the parties in open court and the approval of the court.

J. H. Miner
United States District Judge

Dated: March 10, 1960

1 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *
(Filed Jul 13 1960)

2 TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Julius H. Miner, one of the Judges of said Court, in his courtroom in the United States Courthouse at Chicago, Illinois, on Thursday, April 14, 1960, at 10:00 o'clock, A.M.

Appearances:

Messrs. McConnell, Paschen, Curtis & Loohy,
(Suite 1110, 134 South LaSalle Street,
Chicago, 3, Illinois,), by
Thomas C. McConnell, Esq.,
Herbert C. Paschen, Esq.,
Francis J. McConnell, Esq.,
Lee A. Freeman, Esq., (Suite 514, 105 South
LaSalle Street, Chicago 3, Ill.),
and
John Paul Stevens, Esq., (Suite 820, 105 S.
La Salle Street, Chicago 3, Ill.),
on behalf of the Plaintiff;
Albert J. Meserow, Esq., (Suite 1353,
231 S. LaSalle Street, Chicago 4, Ill.)
Jerome F. Dixon, Esq.,
Theodore J. Isaacs, Esq., (Suite 1613,
231 S. LaSalle Street, Chicago 4, Ill.)
on behalf of the Defendants John L. Keeshin
and Railroad Transfer Service, Inc.;
Joseph C. Owens, Esq., (Suite 1111, 100 N.
LaSalle Street, Chicago 2, Ill.)
on behalf of Defendant Hugh W. Cross;

Marvin A. Jersild, Esq.,
(Suite 1236 LaSalle Street Station,
Chicago 4, Ill.),
On behalf of Defendant The New York
Central Railroad Company;
Floyd E. Thompson, Esq.,
Philip W. Tone, Esq.,
(Suite 3300, 135 So. LaSalle Street,
Chicago 3, Ill.);
On behalf of defendant railroads.

By Mr. F. J. McConnell: Good morning, your Honor. This is our motion to continue the trial now set for next Monday, April 18th, for one week, to April 25th.

Your Honor will recall that when we were in here last January, and we discussed tentatively setting this case for trial in April, my father called to your attention the fact that the McDonald case was set for trial February 1, and that that case would probably take six weeks to try.

As your Honor stated at that time that, of course, you would not interfere with him in his handling of that matter.

By the Court: Any objection?

By Mr. Meserow: There is.

By Mr. F. J. McConnell: There is, and that is the reason why I am stating the reasons.

And the case was tried, and it did take six weeks to try.

Now, when we were in here last—I think it was March 23rd—and we asked that this case be set over until the fall term, at that time it appeared that all proceedings, all trial proceedings in the McDonald matter would be concluded by the April 18th date set by your Honor.

There was one matter left, and that was the hearing

on the entry of findings of fact, conclusions of law, and the final decree. And that was set for April 1st, before his Honor, Judge Adesko.

Now, it happened, due to the death of the late Judge Griglik that the Court was closed on that day, and that hearing had to be postponed.

By the Court: Let me hear the objections.

By Mr. Tone: I am here, your Honor, because Judge Thompson had to attend a funeral out of the City today.

All we have heard, as a reason why this case should be continued for a week, is that Mr. McConnell has an engagement in the McDonald case at four o'clock Monday afternoon.

I don't know why that means that the case should go over a week, rather than a day. We say, at any rate, even if he wants to keep that engagement, it would be certainly feasible to pick up a jury Monday, and to go right ahead and let him go at 3:30.

Secondly, we don't think that any other engagement should interfere with this one. There are five sets of lawyers in this case, and if we waited until every lawyer and every set of lawyers could conveniently appear before this Court, we never would get to trial.

We are getting a late start already in the spring. We have asked Mr. Foit to be here. Mr. Foit is an undersecretary or an under—excuse me—a deputy assistant secretary of the Army. It is very difficult for him to be absent from Washington for more than a day or two at a time.

We want him here, and we feel he should be here when the jury is picked. The plaintiffs have asked us to have him here as one of the first witnesses to testify. We have made arrangements to have him here, and he is coming in this week-end.

We do not want to change those plans. We think it would be most inconvenient for him to change them, since he has responsibilities in the Defense Department which are not to be lightly regarded, so we would urge the Court to deny the motion.

There are—we have matters, too, that we will have to postpone for this trial next week. In the alternative, if we could pick a jury Monday, I think we could finish in time so that Mr. McConnell could get over at four o'clock before Judge Adesko.

By Mr. Meserow: Your Honor, we, too, object to the continuance, and it is not a question of witnesses with us, but is a question of the lawyers.

Now, I have made certain commitments, and I have other cases and other trials and other hearings, and I have made arrangements to go ahead on Monday, April 18th, and I think you should deny this motion to continue.

By Mr. Owens: Your Honor, I have only been in this case a couple of weeks, and I have devoted all of my time in preparation for the trial of it. I have rearranged my schedule next week, so that I will have nothing.

By the Court: What about Wednesday or Thursday, can we go on then?

By Mr. Freeman: Your Honor, let me just add to what Mr. McConnell has said.

We intend, of course, to go ahead when your Honor sets this for trial, and—

By the Court: I have set aside all of my whole week.

By Mr. Freeman: I think if your Honor sets it for Thursday, this will be adequate, and we will—I will undertake to notify all counsel of the—of my estimate of the order of witnesses. I will send a letter out today to Mr. Tone and the rest of them, so that I can advise them when we intend to call these witnesses.

I will do the same with respect to Mr. Cross and Mr. Keeshin, as best I can estimate it, and I will try to keep them advised approximately four, five, six days in advance, as the trial progresses, and while I would like very much for the trial to go over until next week, that is, the following week, because I have a Board of Directors' meeting, but I would not stand in the way of Thursday, if that seems convenient for you.

By the Court: Let me see, I think I have got some recent law here. Excuse me for a minute.

These citations have come to my desk very recently, as you will tell, because they are not published yet. There are a lot of changes in the law since we first started.

Primarily, I am going to read you the case of Marks Food Corporation v. Barbara Ann Baking Company, 274 Fed. 2d, 943. I am reading from Page 936:

> "In the consideration of these points, we must first note that the trial court in proper circumstances, has the right to order separate trials for separate issues in the same case."

This is a jury case also. I am thinking seriously
9 of invoking Rule 21 of the separation of issues in the trial primarily of—I am merely giving you some thought between now and Thursday.

And then we have also another case here, the Seventh Circuit, Radiant Burners, Incorporated v. Peoples Gas, Light & Coke Company, 273 Fed. 2d, 196, and these are not the only cases. I have check the laws and the facts of the case. This case was written by Judge Castle in which he holds:

> "In the instant case, no buyer-seller relationship between plaintiff and any of the defendant appellees is involved. The allegations do not establish a concerted refusal by the appellees to enter into any business relation with the plaintiff."

Here they go on and they hold that public injury and liability is a vital and essential factor in the disposition of anti-trust cases.

Now, since we have adopted the Rule 21, and since we have—I feel we have power under the law, I am thinking seriously of trying first the element of public liability—public injury or public prejudice, and then go on with the same injury if we were to establish it under the remainder of the facts, so give it some thought between now and then.

I have given you some citations. That is what I am thinking about, and it is my own rule, and I will give it a little more thought, and I will discuss it with you Thursday morning.

By Mr. Tone: Your Honor, would it be possible to set a pre-trial in the case before Thursday—say, Friday? We have a lot of preliminary matters to set before your Honor: How many challenges the defendants are going to have, and various things.

By the Court: I intend to spend some time with you when we are in on the trial. I don't want to set them preliminary to going ahead with the trial, because it is not going to accomplish anything.

There will be more time spent on briefs and more time on rules, and more time on haranguing and arguing.

I want to be fair on the challenges, very fair. I want to be fair on the number of jurors, and I want a discussion with you, and while the law is clear, the rules are clear; we have got only one plaintiff and numerous defendants, and I propose to give the defendants a little more leeway and also the plaintiff, and I am not going to be harsh about it, or unkind.

I am seriously thinking to invoke the separation of trial, and if you will read those two cases, you will find that I am pretty much on the beam on both of them.

It may save a lot of time before we go on with the others. But I do not intend to invoke the same jury.

First, the question of public injury, and then the second one, if the first one is sustained.

I feel this is a prerequisite for the plaintiff's right to recover on the question of establishing public injury.

By Mr. Tone: Your Honor indicates that he intends, then, to have a pre-trial conference at the beginning.

By the Court: I intend to spend a lot of time with you when you are ready for trial Thursday; we will go in and probably spend all morning discussing it, and then we will go out and try the case.

By Mr. Tone: What I am concerned about particularly is when to get Mr. Foit here.

By the Court: I will tell you what I am trying to avoid. I don't want to get into any more discussion on areas. I have read Judge Robson's transcript. He made no ruling on it, and made no recommendations on it.

12 I felt that I have ruled enough when I ruled on the questions of the documents and the exhibits. I think they pretty much reflect on my attitude on areas, and I cannot say at this time, and don't propose to say at this time, which areas are and which areas are proper and improper. I will meet those situations as we go on, and we will discuss them with the lawyers as we go right ahead with them.

By Mr. Freeman: Well, your Honor,—

By the Court: I could not arbitrarily say this area is out and this area is in.

By Mr. Tone: I don't think we are going to ask your Honor to reconsider anything he has considered.

We do have in mind, I think, the matter of the scope of the opening statement in the light of the rulings your Honor has made.

By the Court: I will discuss that with counsel. First, let's determine the injuries; let me decide first on the scope.

If I go in on the public injury alone, we are going to limit that to that alone, and then we will go on with the balance of it.

13 By Mr. Tone: I think what your Honor certainly decides to do about that will certainly affect the other matters that we would want to present.

By the Court: I just got them two days ago. I have other cases on my desk. I have read all of the briefs in this case. I have read all of the pleadings.

I will say this: In the pleadings, there is a specific allegation by the plaintiff of public injury. There is a special denial by the defendants of public injury. That joins the issue. In my judgment, that makes a prerequisite to the establishment for its establishment before we can go on with the others, the right to recover.

If we can prove that one, we have one with the rest of them before the same jury.

By Mr. Freeman: I don't know if you mean by public injury the same thing I believe you do.

Since those pleadings, the United States Supreme Court has ruled—

By the Court: I am not going to get into the differences and the question of per se, and everything else.

By Mr. Freeman: You mean liability?

By the Court: Public injury.

14 By Mr. Stevens: There are cases holding, your Honor, that the proving of a violation of the antitrust laws does not establish the public injury and perhaps we should be prepared on that.

By the Court: I am not prepared to prove what?

By Mr. Stevens: Once you have established the antitrust laws, you have established the injury.

The Court: I don't want to make a ruling until I get to the case and until I hear the evidence.

I cannot say now, it is or it isn't a per se violation. I don't want to do that until I hear the facts. When I hear the facts, I will determine whether or not it is per se, or it isn't.

By Mr. Freeman: Thank you.

By the Court: Now, I can't be fair about it, and there are a lot of cases which you say, but they are different type of cases.

Congress had defined and intended to make anti-trust a violation in certain areas of price fixing, limiting competition, as primarily the object of the anti-trust law.

On the other hand, I will give you fifteen citations that hold that this kind of a deal is not within the per se violation.

15 By Mr. Freeman: We don't speak of the per se violation, your Honor.

By the Court: You don't?

By Mr. Freeman: And let us at the proper time present you with the authorities, so that you will understand our position.

By the Court: I felt as long as you are here now, I may as well prepare you for what I am going to talk to you about Thursday, because you have got a specific issue in your pleadings: Public injury and the denial.

My judgment is that under that pleading, it is a prerequisite that it be established before the plaintiffs try to recover. There is a lot of law on that. So let's see you Thursday morning.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 15 is a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the hearing of the above-entitled cause, on April 14, 1960, before the Honorable Julius H. Miner, Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

April 14, 1960.

1 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

2 TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Julius H. Miner, one of the Judges of said Court, and a jury, in his court room in the United States Court House at Chicago, Illinois, commencing on Thursday, April 21, 1960, at 10:00 o'clock a.m.

Appearances:

Messrs. McConnell, Paschen, Curtis & Looby,
(Suite 1110, 134 South LaSalle Street,
Chicago 3, Illinois,), by
Thomas C. McConnell, Esq.,
Herbert C. Paschen, Esq.,
Francis J. McConnell, Esq.,

Lee A. Freeman, Esq.,
(Suite 514, 105 South LaSalle Street,
Chicago 3, Illinois),
John Paul Stevens, Esq.,
(Suite 820, 105 South LaSalle Street,
Chicago 3, Ill.),
and
Herbert B. Lazarus, Esq.,
(1790 Broadway, New York, New York),
on behalf of the Plaintiff;
Albert J. Meserow, Esq.,
(Suite 1353, 231 South LaSalle Street,
Chicago 4, Ill.),
Jerome F. Dixon, Esq.,
Theodore J. Isaacs, Esq.,
(Suite 1613, 231 South LaSalle Street,
Chicago 4, Ill.),
on behalf of the Defendants John L. Keeshin
and Railroad Transfer Service, Inc.;
3 Joseph C. Owens, Esq.,
(Suite 1111, 100 North LaSalle Street,
Chicago 2, Ill.),
on behalf of Defendant Hugh W. Cross;
Marvin A. Jersild, Esq.,
(Suite 1236, LaSalle Street Station,
Chicago 4, Ill.),
on behalf of Defendant
The New York Central Railroad Company;
Floyd E. Thompson, Esq.,
Philip W. Tone, Esq.,
(Suite 3300, 135 South LaSalle Street,
Chicago 3, Ill.),
on behalf of defendant railroads.

4 And Thereupon the following proceedings were had herein:—

By the Clerk: No. 56 C 323, Parmelee Transportation Company, vs. John L. Keeshin, et al, for trial.

By the Court: Good morning. Are you rested?

By Mr. McConnell: No, I am not rested.

By the Court: All right; I am still of the same opinion. I am going to trial on the question of public injury, and if and when that is sustained, we are going on with the same jury on the remainder of the issues.

By Mr. McConnell: Your Honor, I understood, and I wasn't here, but I read the transcript, and I understood you wanted to hear from counsel on that question.

By the Court: I will hear from you. I said and I still say that I am of the same opinion, but it is open for discussion.

By Mr. McConnell: I would like to be heard on it.

By the Court: Certainly.

5 By Mr. Thompson: I agree with Mr. McConnell the matter ought to be heard, and there are numerous matters for consideration in pretrial before we can start selecting a jury.

By the Court: Yes. I want to hear from counsel for both sides, and I will hear you.

By Mr. McConnell: May I proceed?

By the Court: You are on trial. Go ahead. Has the last transcript been written up?

By Mr. Freeman: Yes, sir.

By the Court: Who has a copy of it? May I have a copy?

By Mr. Freeman: Yes.

(Document handed to the Court.)

By the Court: All right, Mr. McConnell, go ahead.

By Mr. McConnell: I have read the transcript, and as I say, I wasn't here when this matter was discussed—

By the Court: Yes, I know you weren't.

By Mr. McConnell: —and it is not clear to me still from the transcript what your Honor had in mind in reference to the issue of public injury as distinguished from other issues in this case.

I have had considerable experience with the anti-
6 trust laws and have tried quite a few cases, as your Honor probably knows, in that field, and I have never heard of that particular issue being singled out in contradistinction to other issues in an anti-trust case.

7 The issue has been referred to as an element of proof usually in cases which arise on pleadings, as to whether or not an allegation of public injury as distinguished from private injury must be made in the civil litigation for treble damages. But this presents an utterly new position with reference to the issue of public injury.

In the cases where that issue has been discussed, they have been resolved either on pleadings or on motions for summary judgment. To two of those cases I wish to advert in the course of this argument.

We have alleged in this complaint, as your Honor knows, because your Honor says in the transcript that you have read our pleadings, we have alleged a conspiracy here between these railroads and Mr. Keeshin and his company and Mr. Cross, to preclude or to boycott or to prevent Parmelee Company from bidding for or obtaining or being considered as against Mr. Keeshin's company for this transfer business.

Those allegations were before Judge Sullivan on their legal sufficiency. Now, I wasn't in the case at that time, and I don't say this in any manner of criticism of my co-counsel or in an attempt to say that anything was done that should have been done differently, but the issue
8 was argued—have you got Judge Sullivan's opinion there?

Even after that argument it is not clear what was being considered on the issue of public injury. But on the pleadings—and I take it that we are going to try this case on pleadings. That is the way cases are usually tried.

Judge Sullivan, in referring to that contention which was made on the motion to dismiss the complaint, stated, and I am quoting from Page 7 of the transcript of his opinion:

> "It is urged that the complaint is fatally defective in that it fails to allege an injury to the public as opposed to a merely private wrong, and of course, such an allegation is required—"

And he cited the Pederson Motors case, 180 F. 2d 519.

9 Then he goes on and says:

"In the instant case, however, the requirement has been met. The allegation of the elimination of competition for the contract to provide terminal transfer services is itself sufficient—" and he cites United States against Yellow Cab Company, in which the Supreme Court stated, and I am paraphrasing what they said, that there was an important segment of interstate commerce involved in this transfer business from one terminal depot to another here in Chicago, and that it was all part of the stream of interstate commerce, and what was presented by anything that attempted to preclude a competitor from competing for any portion of that business was a direct, as distinguished from an indirect, effect upon interstate commerce and was a violation of the Sherman Act.

Now stopping there, if what we are talking about here is an issue which involves whether or not these defendants have violated the Sherman Act, and that is what your Honor intends to prove before we get into the issue of damages, if that is what we are talking about, I think it

would make it more difficult to handle this case that
10 way. I don't have too much objection to that sort of procedure, if that is what your Honor wants to do for any reason which your Honor may have in mind. Of course, even on that issue, I want to call to your Honor's attention that in a civil action as distinguished from an action brought by a public prosecutor, the private litigant has the further burden of showing that he is damaged. Otherwise there isn't any liability under the anti-trust laws. There is just no overhanging liability under the anti-trust laws unless somebody gets hurt and can come in and show that they are hurt.

So even on the issue of liability, we would at least have to show, in order to make out a case, that we were hurt. We might not have to show it in exact figures, in dollars and cents how much we were hurt, but the cases have referred to the fact of damages as distinguished from the amount of damages, and I think in order to make out any case under the anti-trust laws for a private litigant which this Court would want to take cognizance of, we would have to show that we were in the business and that we were hurt by being excluded from the business. Our proof would certainly have to go that far

11 Now if what your Honor has in mind is the conspiracy issues or monopoly issues, if you want to refer to them that way, though we are alleging violation of both sections of the Sherman Act, both a conspiracy to monopolize and exclude a competitor and also the fact of monopolizing a segment of commerce, plus the fact that we are injured — if that is the issue we are about to try, that is one thing. But if it is a more limited issue, if what your Honor has in mind is some specific injury to the public as distinguished from an injury to a litigant due to rates or service or something of that kind, or quality of the service rendered and things of that kind, then I have a very serious quarrel with the proposed

method of proceeding. It is to that that I wish to address myself because I must assume that that is what is in your Honor's mind.

By the Court: That is what is in my mind.

By Mr. McConnell: Now this matter of adding conditions, hurdles and blocks for litigants to get over in anti-trust cases is not novel and is not new and is not something that I haven't met many, many times in one form or another.

I can recall two cases that I have tried where the
12 Thompson law firm raised the question. They raised it in the Zenith case, saying we had to show some special public injury as distinguished from a violation of the anti-trust laws, and that was overruled there by Judge Igoe.

It was also raised in the Congress case, and while it wasn't specifically dealt with, the opinion of Judge Knoch which dismissed the Congress Theatre case was reversed by the Court of Appeals and the case sent back to be tried.

The only injury that was alleged in either of those cases or proved or attempted to be proved was a violation of the act. It is our contention here, and it has always been my contention in these cases, that the act of the Congress defines the public injury, and when the Congress says that certain things are forbidden and unlawful and illegal, and you show that those things have been done, then you have brought yourself within the provisions of the Act, and to add something else by interpolating by court procedures or by court rulings, which is not within the scope and the purport of that act — Congress itself determined what it wanted to stop and what it didn't want to stop, having set forth in an act what is a violation of the act, and then if we prove a violation of that act,
13 we have done all that the Congress ever intended a private litigant to do. To buttress my statement on that, I want to go to the Radovich case.

14 The Radovich case seems to me is the entire, the beginning and the end.

By the Court: Which case?

By Mr. McConnell: The case of Radovich against National Football League, 352 U.S. 445. It is One Law Edition, 2d, 456.

The title of the case is Radovich against National Football League. Radovich brought an action for treble damages and injunctive relief under Section 4 of the Clayton Act, and he alleged that the National Football League conspired to prevent him from getting employment, and he alleged that the business was in interstate commerce, and that when he attempted to obtain employment by the San Francisco Clippers, a member of the Pacific Coast League, the National League wrote that league and said that he was black listed because he had violated a contract which he had had with a team in the National Football League.

A lower court held there was nothing in his complaint which set out specifically that there was any injury to the public by virtue of his being black listed, that after all he was an old football player practically ready to go on the shelf, as he was thirty-five years old, and it didn't make any difference to the public, that there 15 wasn't any threat of any of these leagues being closed up, and therefore that there couldn't be any interest in the public whether somebody hired Mr. Radovich or didn't hire him, and therefore, even though he may have shown private injury, he hadn't shown any public injury, and there was an issue squarely raised in both the lower court and the Court of Appeals—

By the Court: On the pleadings or on the trial?

By Mr. McConnell: Raised on the pleadings.

The case went up and was taken on certiorari by the Supreme Court. There were two questions raised, really.

One was whether football came within the purview of the anti-trust laws, and the defendants, of course, relied on the baseball case which had held way back when baseball didn't come within it, and that was sustained in the Toulson case by the Supreme Court, where the Court said, in effect, that the baseball case was sui generis and didn't apply to football, and that football did come within the purview of the anti-trust laws, and there was television involved and radio and interstate commerce was involved, and so forth.

The only question here is whether or not he had to show, as distinguished from injury to himself, that
16 the public was injured, and the Court dealt squarely with that question.

The Court says this, on page 462, of One Law Edition 2nd:

> "We now turn to the sufficiency of the complaint. At the outset, the allegations of the nature and extent of interstate commerce seem to be sufficient. In addition to the standard allegations, a specific claim is made that radio and television transmission is a significant, integral part of the respondent's business, even to the extent of being the difference between a profit and a loss."

Then they say:

> "Likewise, we find the technical objections to the pleading without merit. The test as to sufficiency laid down by Mr. Justice Holmes in Hart *v.* B. F. Keith Vaudeville Exchange is whether 'the claim is wholly frivolous.'
>
> 17 While the complaint might have been more precise in its allegations concerning the purpose and effect of the conspiracy, 'we are not prepared to say that nothing can be extracted from this bill that fails under the act of Congress.'"

Then they get into this point which we are discussing here:

"Petitioner's claim need only be 'tested under the Sherman Act's general prohibition on unreasonable restraints of trade,'" citing Times Picayune Publishing Company *v.* United States.

". . . and meet the requirement that petitioner has thereby suffered injury. Congress has, by legislative fiat, determined that such prohibited activities are injurious to the public and has provided sanctions allowing private enforcement of the anti-trust laws by an aggrieved party. These laws protect the victims of the forbidden practices as well as the public." Citing Mandeville Island Farms, Incorporated, *v.* American Crystal Sugar Company.

18 "Futhermore, Congress itself has placed the private anti-trust litigant in a most favorable position through the enactment of Section 5 of the Clayton Act." Citing the Emich Motors Corporation *v.* General Motors Corporation case.

"In the face of such a policy, this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws. Respondents' remaining contentions we believe to be lacking in merit. We think that Radovich is entitled to an opportunity to prove his charges."

What the Court says there in word which nobody can misunderstand is if you proved a conspiracy in interstate commerce violative of the Sherman Act, that you have satisfied any requirement of injury to the public, because the Congress itself is the protector of the public interest and has enacted a law to do that after full consideration of all the factors which are involved in the public interest, and that the Court should follow and should sustain the acts of Congress.

Mr. Freeman calls my attention that in that quote
19 which I have read to your Honor the reference to Note No. 10, which is as follows:

"In Apex Hosiery Company *v.* Leader, 310 U.S. 469, 84 Law Edition, 1311, this court said: 'The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services, all of which had come to be regarded as a special form of public injury."

Then speaking of the anti-trust laws, the Court said:

"The law is its own measure of right and wrong, of what it permits or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results."

20 As I say, that is just as clear a statement as could ever be formulated, that all a private litigant has to do in the enforcement of the anti-trust laws, and this should be considered, too, by your Honor, that the Congress has in mind, and the Supreme Court has said this again and again.

They said it in a case I had, the Bigelow case, when they took it on certiorari, when they granted certiorari, where they said that the public enforcement of the anti-trust laws is aided by the private litigant's efforts, spurred, of course, by obtaining treble damages for the injuries sustained by the private litigant.

21 The private litigant in the litigation which they bring before the courts performs a public function by enforcing this law which the Congress thought was in the public interest, or they wouldn't have enacted it.

The only reason for enacting laws of this kind is in the public interest. To say we have to show something different and beyond the Act, which is not included in the Act, would be like saying that we couldn't convict a man for murder, even though he murdered somebody, because the public wasn't damaged, and he might have been a fellow who was very good to get out of the community and get rid of, and everybody might agree on that.

You might just as well argue the man wasn't guilty of murder, because the fellow he murdered was no good, and the public was just wonderfully benefited by having him in his grave.

Before I go to my other case, I want to spell this out in a little more detail. It is perfectly obvious that our community is a free community, intended to be such, that these laws have a great public significance.

You cannot run a free economy based on cartels and monopolies and exclusions from a right to compete
22 in a free competitive order. There isn't anything in between.

You either have a free economy, or you have a cartel or dictatorship. There is nothing in between, and with a great deal of wisdom, it seems to me, and the courts have said this over and over again, that with a great deal of wisdom the Congress enacted these anti-trust laws to preserve for our heritage a free economy where people could compete for things, where they could carry on their business activities free from group boycott, free from group conspiracies, free from having all of your competitors ganged up against you or all of your customers ganged up against you where you cannot do business with them.

The public interest in that is so obvious, particularly in the days in which we are now living, that it would seem to me that it wouldn't be the subject of argument,

and to say that I have to spell out here in proof as a condition to going forward with this lawsuit, that something Mr. Keeshin did wasn't as good as Mr. Parmelee did or Parmelee's company did, just does complete violence to the entire purpose of the anti-trust laws.

You are putting hurdles here, if that is done, where
23 the private litigant has to try his case piece-meal.

It has always been the strategy of the defendants in anti-trust laws to cut the conspiracies up in little bits and look at one little piece at a time, and say, "This is valid, and that is valid, and the other thing is valid. As long as each little piece is valid, the over-all thing can't be invalid."

That has been a stock argument. You expect that, and that is an argument, but here it is an attempt to divide up and cut up and segment and put into little pieces a lawsuit so that I can't tell a jury, and I can't get before the jury at the outset what this lawsuit is about, and this lawsuit is about a vicious conspiracy to stop our client from competing for this business, and they succeeded, and it monopolized this business for a period of some five years.

That is the kind of public injury we show by our proofs, and that we are ready to show by our proofs, and the Supreme Court of the United States has said in as distinct words as can be stated that that is all that I should be required to prove.

That is all the Congress requires me to prove, and the Courts shouldn't interpolate other hurdles and other things which I have to go over or get beyond as a condition precedent to showing this jury what this lawsuit is about.

24 The other case I want to refer to is the case of Klor's *v.* Broadway-Hale Stores, which is a very recent case. That is 359 U.S. 207, 3 Law Edition Second, 741.

This case went up from the California Court of Appeals in San Francisco on a case which was decided on summary judgment.

Klor's operated a retail store which had to do with electronic goods, radios, television sets, refrigerators and other household equipment. Broadway-Hale Stores had a chain of department stores and operated one of its stores next door to Klor's.

Klor's brought an action for treble damages against the Broadway-Hale Company and a number of manufacturers and distributors of electronic equipment. Some of them were General Electric, RCA, Admiral, Zenith, Emerson, and others. He alleged a conspiracy whereby Hale's used its buying power to exclude the sale of these electronic goods to Klor's.

Now, in the face of that complaint, affidavits were filed to the effect that the public wasn't damaged because they could buy the goods, plenty of outlets to get the goods. They weren't injured in any way because of prices. They weren't injured in any way because of the quality or the quantity of the goods, and that therefore the case should be dismissed.

25 The lower court, on the basis of these affidavits, dismissed the case, and the case went up to the Court of Appeals. The Court of Appeals affirmed it, and said that there was no specific injury done to the public in this instance, and therefore theman hadn't made out a case; that it was purely a private quarrel between Klor's and Broadway-Hale Stores.

26 I am reading from page 743 of the 3 Law Edition 2nd., from the Supreme Court's opinion:

"The court of appeals for the Ninth Circuit affirmed the summary judgment. It stated that 'A violation of the Sherman Act requires conduct of defendants by which the public is or conceivably may be ultimately

injured.' It held that here the required public injury was missing since 'there was no charge or proof that by any act of defendants the price, quantity, or quality offered the public was affected, nor that there was any intent or purpose to effect a change in, or an influence on, prices, quantity, or quality. * * *

"The holding, if correct, means that unless the opportunities for customers to buy in a competitive market are reduced, a group of powerful businessmen may act in concert to deprive a single merchant, like Klor, of the goods he needs to compete effectively. We granted certiorari to consider this important question in the administration of the Sherman Act." Then they say this, and this is our case:

27 "We think Klor's allegations clearly show one type of trade restraint and public harm the Sherman Act forbids, and that defendants' affidavits provide no defense to the charges. Section 1 of the Sherman Act makes illegal any contract, combination or conspiracy in restraint of trade, and Section 2 forbids any person or combination from monopolizing or attempting to monopolize any part of interstate commerce. In the landmark case of Standard Oil Co. v. United States, 221 U.S. 1, this court read Section 1 to prohibit those classes of contracts or acts which the common law had deemed to be undue restraints of trade and those which new times and economic conditions would make unreasonable. The court construed Section 2 as making 'the prohibitions of the Act all the more complete and perfect by embracing all attempts to reach the end prohibited by the first section, that is, restraints of trade, by any attempt to monopolize, or monopolization thereof. * * *"

28 "The effect of both sections, the court said, was to adopt the common law proscription of all 'contracts

or acts which it was considered had a monopolistic tendency' and which interfered with the 'natural flow' of an appreciable amount of interstate commerce."

Citing Eastern States Retail Lumber Dealers' Association v. United States.

"The court recognized that there were some agreements whose validity depended on the surrounding circumstances. It emphasized, however, that there were classes of restraints which from their 'nature or character' were unduly restrictive, and hence forbidden by both the common law and the statute. As to these classes of restraints, the court noted, Congress had determined its own criteria of public harm and it was not for the courts to decide whether in an individual case injury had actually occurred.

29 "Group boycotts or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category."

Now, what are we trying to prove here? That is exactly what we are trying to prove, that these railroads conspired together, the conspiracy occasioned and triggered by Cross' use of his influence on the Interstate Commerce Commission to importune them into joining, shoulder to shoulder, against Keeshin and reverse their position; where they had already approved a contract with Parmelee or signified their readiness to do so, to change their position and to write one for Keeshin instead.

Right within the scope of this decision, that is exactly what we are trying to prove, and you can see why I have some slight quarrel with any ruling by this Court which would prevent us from showing that conspiracy on the theory that we have to get over some other outside hurdle, clamber over that, before we can get to our constitutional right to a trial by jury on the issue of conspiracy here to put my client out of this business, which it did.

The court goes on and says -- once this is shown,
30 just what I am talking about, group boycotts, group refusal to deal, evidenced here by a contract in which they all agree not to deal with Parmelee for a period of five years.

This sort of thing, the court says,

"They have not been saved by allegations that they were reasonable in the specific circumstances, nor by a failure to show that they 'fixed or regulated prices, parceled out or limited production, or brought about a deterioration in quality.'"

31 They cite the Fashion Originators' Guild *v.* Federal Trade Commission.

"Even when they operated to lower prices or temporarily to stimulate competition they were banned."

Citing Kiefer-Stewart case.

"Such agreements, no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment."

Then the Court says:

"Plainly the allegations of this complaint disclose such a boycott. This is not a case of a single trader refusing to deal with another, nor even of a manufacturer and a dealer agreeing to an exclusive distributorship. Alleged in this complaint is a wide combination consisting of manufacturers, distributors and a retailer. This combination takes from Klor's its freedom to buy appliances in an open competitive market and drives it out of business as a dealer in the
32 defendants' products. It deprives the manufacturers and distributors of their freedom to sell to Klor's at the same prices and conditions made avaliable to Broadway-Hale, and in some instances forbids them from selling to it on any terms whatsoever. It inter-

feres with the natural flow of interstate commerce. It clearly has by its 'nature' and 'character', a 'monopolistic tendency.' As such it is not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy. Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups. In recognition of this fact, the Sherman Act has consistently been read to forbid all contracts and combinations 'which tend to create a monopoly,' whether 'the tendency is a creeping one' or 'one that proceeds at full gallop.'"

They reversed the judgment of the court below and sent it back for trial.

33 Now, what are we talking about here? We are talking about a monopolization of the entire stream and segment of the commerce, all of it, every bit of it, from the eight different terminals in the City of Chicago — six largely control it — all of the transfer of interstate passengers from one terminal to the other and their baggage is by this method controlled.

Our competition, as Judge Sullivan pointed out in his opinion on the sufficiency of the complaint for contracts with individual railroads or the group, or to be allowed to compete for this business in any manner was excluded under the allegations of this complaint by conspiracy, an illegal act under the Sherman Act.

34 It seems to me that the public injury is so obvious in that situation that I shouldn't even have to argue it here.

Now our position is this, and I don't think your Honor is going to misunderstand me when I state it as frankly and clearly as I can state it — I may have some other attributes which are not so good, but I don't think people

have any trouble understanding what I have to say. I may be overstating my position in that, too, I don't know.

But we are here with a serious lawsuit. We are here with a client who was in this business 102 years; not the same management, obviously, but the same operation, serving these railroads faithfully over the years.

We have come into court here alleging a very vicious conspiracy, one inspired and carried out and fomented and importuned by a high government official.

This should be a forum where we could have that lawsuit tried without being hemmed in and penned in with a lot of artificial restrictions, dreamed up by counsel on the other side, whereby we are not given an opportunity to tell this jury what this lawsuit is about.

35 I can't believe that your Honor wants to hamstring me in the presentation of this lawsuit. We are here in a serious capacity. We are an officer of this court. We are not here with a frivolous lawsuit. We want to try it, and that is not an objectionable request —

By the Court: There is only one correction. This was not dreamed up by the counsel on either side. It came from the court on its own motion, free and voluntary in open court, and nobody has indicated to this court. This is the rule that I invoked in this court, the separation of issues.

That is the only correction I want to make. I am listening to you.

By Mr. McConnell: Of course, I have to accede to your Honor's statement on that.

By the Court: Yes. That is a fact.

By Mr. McConnell: But because your Honor says it or states it, and I say this with all due deference to your Honor, doesn't lessen my duty in one iota to contend here with all the energy and all the seriousness that I can muster that such a ruling deprives this litigant of his day in court.

By the Court: I have no objection to that contention. None whatever. Make it as emphatic as you
36 can and as legal as you can.

By Mr. McConnell: It is our position that we have a constitutional right to appear here and try this lawsuit the way lawsuits are usually tried and even courts, and I say this with all due deference, have no right to tell me, the lawyer for the plaintiff, how to try this lawsuit.

I have a right to try this lawsuit in a way that can best present the issues to the jury and to the Court. With all due deference which I have for this Court, it is not the province of the courts to tell counsel how to present their lawsuit, if they are presenting a serious lawsuit.

Of course, if I am in here with some frivolous contention, which is just wasting your Honor's time and the time of the jury, that is one thing. How am I wasting time by asking the jury to hear issues which the Supreme Court of the United States says are the only issues?
37 If I understand your Honor's ruling, it is on the basis of trying to save somebody's time, and the Supreme Court says that a private litigant has a right to show a violation of this statute, and when he shows that, that is all the court should try to make him do. That is what the Congress said he had to do. That is what the Supreme Court says he has to do. I am asking this Court to follow the rules of the Supreme Court.

Now, I don't know why, and I am not charging anything against your Honor, where you get your ideas or anything else, but somebody, it seems to me, is always working overtime to emasculate the anti-trust laws for some reason or other. I don't know any better way to do it than this, to compel a litigant to try his case in little bits of dribs and dabs, and to preclude on the issue

of public injury what the Supreme Court says is involved in it.

I feel, and I feel it very deeply, that this can only result in depriving this litigant, at least for the time being, of a day in court on a very, very important public issue.

Here we have all the railroads of this country practically — there are twenty-one railroads in this Ter-
38 minal Association, which are involved in this conspiracy through their Committee of Six — charged with conspiring with a public official, a member of the Interstate Commerce Commission. That issue can't be heard here under your Honor's proposed ruling on the ground that we have to show some other public injury.

It would seem to me that in an anti-trust case, at least, it has been a long, long time since any issue of greater importance has been presented to a court, where the railroads of this country and all of them can conspire together with a public official to prefer one competitor over another, and using the clout, if I may use a slang expression, of that great Commission, to compel the railroads to fall in line with that sort of a violation of the anti-trust laws. Your Honor is proposing a ruling where that can't be shown.

39 I will say that it is a terrific injustice to my client. It deprives him completely of the chance to try the case which he has brought in your Honor's court. I know nothing in the rules of the Supreme Court, nothing in the law of anti-trusts, and there is no convenience served except the convenience of these defendants to try an irrelevant issue. I say that advisedly, an irrelevant issue, because if we prove under the doctrines laid down by the Supreme Court that by conspiracy and by monopoly we have been precluded from competing for an important segment of interstate commerce, that that doesn't con-

stitute a violation of the Sherman Act unless we go further and preliminarily as a condition precedent to our right to a trial by jury, prove that by quality or quantity or the service or something else, the public was specifically damaged in dollars and cents.

I don't know any other way to state it than I have stated it. If your Honor can't see the vast overriding public interest and public policy involved in this situation, with its consequent effect on the rights of litigants under the anti-trust laws, to divide up their lawsuit in little segments, there is just nothing I can do about it.

40 I have stated my position, and that is it, and I say it with all due deference to your Honor. I don't impugn your Honor's motives in any way in taking this position, but I want your Honor to understand the implications.

By the Court: I understand them fully.

By Mr. McConnell: I submit that we are entitled to try our lawsuit here just like other anti-trust cases have been tried in these courts.

I know of no case that says that we have to try this bit by bit, piece by piece, and try an irrelevant issue before we get to our lawsuit, and I submit we shouldn't be compelled to.

41 We shouldn't be put under that sort of a condition, presenting the rights which we have and which are guaranteed us by the laws of this land in this court.

By the Court: Does anybody else want to add anything to this argument?

By Mr. Thompson: If the Court please;—

By the Court: Judge Thompson.

By Mr. Thompson: I hope I can present the position of the defendants, at least those defendants I represent, and I hope of all defendants on this question without blowing a gasket and without any insinuations or any

innuendos or anything else which have nothing to do with the matter at this stage.

Mr. McConnell has well presented the position of the plaintiff in this case on this question, and so far as I am speaking for the defendants, I shall make no comment on his conclusions and deductions from the cases that have to do with the law in this situation.

I want to join him in opposing the splitting up of this case into segments and trying this issue at this time in this fashion, because I consider it to be very much against the interests of the defendants, and that the defend-
42 ants will be denied an opportunity to bring to a close what we regard as a case with no merit at all, a case built on the same sort of suspicions and creations of feelings of vengeance, just as has been the discussion before your Honor this morning, based on suspicions and aversions to counsel for the defendants.

We think that this case ought to be disposed of once and for all. It was filed against these defendants more than four years ago. Circumstances have delayed the trial, over which this court certainly had no control and over which these parties had no control, these defendants.

Plaintiff brought the case here. The defendants are here in response to a case brought against them. They are obliged to defend themselves.

We think we can defend ourselves successfully on the issues that are presented by the complaint and the answer. The contract which is in issue here expires this October 1.

Every day of delay adds to the liability asserted of damages, and we want it disposed of and disposed of now and not take the chance even of having a segment of the case tried here and determined and then reviewed and even a chance of its being reversed on review so we
43 will have another year delay in disposing of the lawsuit.

The case is at issue and ready for trial. Parties are all prepared for trial. We can try the whole case as quickly as we can try this segregated part of the case, and we can have a case presented at the end of the plaintiff's case which may dispose of the lawsuit, because we think the plaintiff will utterly fail to prove any conspiracy, even a good suspicion of one, or any boycotting or anything else that is a violation of the anti-trust laws.

We want it presented in that fashion. We want every facet of the case tried. We want it submitted to the Court at the conclusion of the plaintiff's case as to whether they have even come close to proving a case.

If the Court feels at that time that they have made a prima facie case, of course, we will present our defense.

We think it would be highly prejudicial to the defendants to have submitted to them the single question of whether there was public injury. We think the facts are as they will develop before the plaintiff finishes its case, that this as a case solely of private complaint.

We think in order to submit to the jury, so far as the defendants are concerned, this question of whether there was public injury as a separate and distinct issue, carries with it the assumption that there is some case back of this issue of whether there is public injury, that is the assumption that there may be a conspiracy here and there may be a boycotting and there may be a lot of other things, but if there is no public injury, then, of course, the verdict should be for the defendants.

If that kind of an issue is submitted, then the defendants have to face this argumentative assumption, that these other things exist, when we think they do not exist, and there is no conspiracy.

By the Court: What was your position before Judge Sullivan, Judge Thompson, in your briefs to strike the complaint?

By Mr. Thompson: Our position was the complaint did not state a cause of action.

By the Court: What were your specific allegations?

By Mr. Thompson: We think it does not state a cause of action, but it was decided that it does, and the Supreme Court of the United States —

By the Court: What would have happened to the charge against your clients in a conspiracy if the
45 Judge had sustained the motion to strike?

By Mr. Thompson: Then it would have been taken up, I suppose.

By the Court: That was your motion, Judge Thompson, and I have read those briefs.

By Mr. Thompson: Certainly, it was my motion, and I still believe the complaint doesn't state a cause of action, but the Supreme Court of the United States, which has an opinion beyond mine, said in the Klor's case,

"If you write a letter to the court and say you have a complaint against somebody, that is enough."

I think that is nonsense, but that is what it says, and a lot of district courts think it is, too, by their opinions.

I don't want to take the chance at this late date, four and a half years or five after this case has been started, that we go up and come down again and try this case all over, because we are ready to try it now. We have everything ready on both sides, I assume. It has been long enough getting it ready.

I think we have it ready, and I want to try it. The defendants want to try it, and we want it disposed
46 of. We think it can't be disposed of by this splitting of the issues without seriously prejudicing the defendants, and the idea of the defendants going on before the same jury to defend themselves against the balance of the lawsuit, if they find against the defendants on this separate issue of whether there is public injury, is just one that I can't accept at all.

The defendants just couldn't have a fair trial after that sort of a thing if that happened, and I must confess that I don't know where the boundaries are on thise separate issue, what we would be trying and what would be presented to the jury and how it would be presented and how the instructions would be presented, separating it from the other fragments of the case.

Anyway, your Honor, the defendants want this case tried on all the issues at this time, and we hope your Honor will, on further reflection, allow the parties to go ahead and finish the job at this late date.

That is only one issue. I have other matters I want to present as far as pre-trial is concerned.

By The Court: Let's go ahead.

47 By Mr. Thompson: The other matters I want to present, as far as pretrial is concerned, are—

By Mr. Meserow: May I interrupt and answer Mr. McConnell very briefly before you go into the other matters?

By Mr. Thompson: If you think you can, go right ahead.

By Mr. Meserow: If the Court please, I am only speaking for my clients, the defendants John L. Keeshin and Railroad Transfer Service, and partially I join with my colleague, Judge Thompson, in saying that there have been many accusations here over the past four and a half or five years about the defendants and what they did.

Mr. McConnell made some today, and we would welcome a full and complete trial, because we feel that the plaintiff could not prove its case, and we feel that we could adequately present a defense before the jury, and your Honor.

However, your Honor, maybe I have not reached the stature, especially in age, of Mr. McConnell or my good

colleague Judge Thompson, but I believe the law is a progressive science. It is not static, and it changes, and when Mr. McConnell says to you that he has never
48 heard of an anti-trust case that has been tried piecemeal, that may have been true in the days when he tried his first anti-trust case, the Jackson Park Theatre case, but that was a long time ago.

Since then there have been progressions made by courts in their rulings.

Your Honor, in the motion to dismiss, which the defendants filed before Judge Sullivan, they did raise the fact there were not sufficient allegations of fact of public injury. That was overruled by Judge Sullivan. That does not preclude your Honor from determining what the issues are here at this time.

As a matter of law, since Judge Sullivan passed upon overruling the motion to dismiss, the plaintiffs—not the defendants, but the plaintiff filed a motion for summary judgment, and they based it solely upon the theory that the Keeshin contract with the railroads was void and was contrary and in violation of the Anti-Trust Act. This Court overruled that motion.

If we want to argue, and we don't know now, we could say there was no, per se, violation by reason of that ruling, and therefore they must prove public injury, but let's forget that.

49 They, in their complaint, the plaintiffs, they put in the question of public injury. We did not. They made the issue, and we denied it. There is an issue of public injury here.

Now, Mr. McConnell says he is being deprived of his day in court. I don't think that the ruling of the judge in this court, the proposed ruling of trying separate issues, and may I say that there are, that this Court has ample

authority for trying these cases separately, and even the case that your Honor cited, the Marks Food case of the Second Circuit says:

"In the consideration of these points we must first note the trial court in the proper circumstances has a right to order a separate trial, trials for separate issues in the same case."

They cite authority for that.

There are many cases holding that you may try separate issues in the same case. Public injury is recognized as a separate issue in this case.

50 It is one issue, yes. The conspiracy and all the rest, as Mr. McConnell says, are other issues, but if this Court and a jury should hear and try the issue of public injury, that does not preclude this Court or Mr. McConnell from going ahead with the other issues, with the complete case. It doesn't stop him.

It depends on what the jury will decide. If the jury decides there is a public injury, Mr. McConnell has full time to go ahead with the rest of his case, so that he is not precluded. He has his full day in court.

I say, your Honor, and I don't want to go into a lot of cases, but the Klor's case and the Radovich case cited by Mr McConnell, they were decided on the pleadings.

This Court, in its proposed ruling, is going further. It is not depriving Mr. McConnell of his day in court in deciding the case merely on the pleadings, but it is giving him a jury trial, and I, for one, again I say that I join with my colleague, Judge Thompson, in saying we would welcome the opportunity for a full dress trial to vindicate ourselves here from all these false accusations that have been made, but I say this to your Honor, that I think there is ample authority in the law and in the

51 recent cases, and I think the case that was cited by your Honor in this circuit, the opinion by Judge

Castle in the Radiant Burner case is directly in point with the proposed ruling of your Honor.

Thank you.

By The Court: All right; Judge Thompson.

By Mr. Thompson: I think I have already made my position clear on this other. Of course the Court has authority to divide issues. Nobody has questioned that. The question is whether the defendants will get a trial, a fair trial if it does, and I think they will not, and I am opposed to dividing the issues

There are other matters that are to be covered, I think, by pre-trial conference in any case of this character, which would be the following:

We have here a lot of witnesses whose depositions were taken in the course of pre-trial procedures, who are scattered all over the United States from the Mississippi River to the Atlantic Ocean, and obviously we don't want them sitting here in the court room all the time, but we do want to cooperate fully with the plaintiff's counsel in having them here as, if and when they want them.

We don't even know yet whom, among all of those
52 people, are to be examined. They have been very courteous in advising us those that they think they will need during the first week of the trial, and those arrangements have been made by agreement.

We think that without the Court having anything to do with it, counsel on both sides will agree on this schedule, but if there is any doubt about it, I just want the Court to know that we are prepared to produce such witnesses as we are under any obligation to produce upon a proper arrangement, but we don't want any implication to arise, by virtue of some witness or even some defendant not being in court, and I assume counsel will respect that situation.

For instance, Mr. Simpson, the president of the Baltimore & Ohio Railroad, will undoubtedly be a witness, but he is running a railroad, and he certainly can't be expected to sit in the court room from the time this case starts until it finishes.

I don't want any references made to the fact he isn't here.

By The Court: How long do you think the whole case will take? I am asking both counsel.

By Mr. Thompson: I have no idea, of course.

By The Court: What is your best guess?

53 By Mr. McConnell: I would guess we can put in our case in two weeks. I think we can put in our case in about two weeks.

By Mr. Thompson: I gathered from the witnesses that had been noticed to be produced, that they had planned quite differently than what had been in mind perhaps earlier, and that they would probably put their case in in a couple of weeks or so, and if that is so, I should think ours wouldn't take any longer, and we would be through with this in four weeks, whereas it looked like it was going to take six weeks or two months at an earlier period in this preparation.

By Mr. McConnell: I will assure Judge Thompson I will cooperate with him in any possible way so that these witnesses will not be inconvenienced.

By Mr. Thompson: Nor will any defendant be embarrassed by his absence that you have not asked for?

By Mr. McConnell: You will have no problem with that.

By Mr. Thompson: I was sure of that, but I wanted the Court to understand these defendants are not in court because they are treating the case with contempt, but it is because they have something else to do.

54 The No. 2 point on my agenda is the matter of peremptory challenges. The statute says and has for a good many years that where there are multiple defendants, that the Court may allow, in addition to the three statutory peremptory challenges, challenges to be exercised by the defendants jointly or by individual defendants separately, and there is also an amendment to the statute later that makes the situation as to multiple plaintiffs the same.

Of course, in this case there are no multiple plaintiffs, and so plaintiffs are limited under the statute to their three peremptory challenges, but as to the defendants, there are quite a lot of them here, and as you can see—

By The Court: How many defendants all told?

By Mr. Thompson: There are six railroad defendants, four presidents, being ten, and two is twelve, one is thirteen, and one is fourteen—fourteen defendants.

By Mr. McConnell: There are thirteen.

By Mr. Thompson: You forgot the Railroad Transfer Service.

By The Court: What would you consider a fair allocation on challenges for the defendants?

By Mr. Thompson: Your Honor, the five railroads
55 that I represent and the four railroad presidents that I represent with my office associates, and I think the New York Central is separately represented, but I think as far as the railroads and railroad presidents are concerned, we don't need any extra challenges, if there are extra challenges accorded.

I would say there are three groups, the railroads and the presidents, Mr. Keeshin and his company, and Mr. Cross, and I should think they ought to have at least three each.

56 That is, that there should be nine peremptory challenges by the defendants to be exercised jointly or

separately, because Mr. Cross' interests are certainly different than those of the railroad defendants and presidents, and the Keeshin Transfer Company's interests are distinct.

Their defenses are different, and I should think they need nine altogether on the defendants' side. Whether they will ever be used or not is something else, but there is no such thing as matching the defendants' extra challenges with plaintiff's as I understand the law.

By The Court: What do you think ought to be done?

By Mr. McConnell: I have a hazy recollection of having read somewhere a case where there were multiple defendants, and unless they showed a diversity of interest, that they wouldn't get any more peremptory challenges than the opposing party, but that is just a hazy recollection. I can't cite the case.

By The Court: Suppose I allow them the nine, what would you expect as a fair allocation for you?

By Mr. Thompson: They are not entitled to any extra.

By The Court: I know, but I can exercise my discretion in allowing it.

By Mr. Thompson: The statute doesn't give it to you.

57 By Mr. McConnell: I think Judge Thompson is right on that. I don't think we get any more than three.

By Mr. Thompson: As to the case, you and I can both cite cases on any point like the devil can cite Scripture for his own purposes.

By Mr. McConnell: As you very well know, and you are very well accomplished at so doing.

By Mr. Thompson: That is right, but I didn't cite any this morning.

The next point I have—

By The Court: Let's make it nine and three.

By Mr. Thompson: All right, nine and three.

The next point is the examination of jurors. Does your Honor plan to allow counsel for the respective parties to question the jurors on voir dire?

By The Court: Yes; I intend to follow my usual procedure here. I talk to the jurors about ten minutes on the general principles, and I let each counsel interrogate, reasonably limited, on their own individual points of view.

By Mr. Thompson: The next thing is the matter of expediting this examination of jurors. I find, as far as my experience is concerned, which is somewhat limited, that if I have a list of the jurors with their names and addresses of the panel that are immediately to be
58 called in front of me, it saves time writing down the names and writing the addresses, and it is right in front of me.

I don't know whether we have available the list of the jurors that will be called into the box.

59 By The Court: We don't have a typewritten list, but I have a list here of those that were given to my deputy marshal this morning. I suppose my secretary could make up a list of them.

By Mr. Thompson: It is a convenience, don't you think?

By Mr. McConnell: Yes, a great convenience.

By The Court: We will make up a list. We ought to have at least twenty-four available.

By Mr. Thompson: Of what?

By The Court: Twelve jurors to be picked, nine challenges and three challenges being twelve, and twelve and twelve is twenty-four. We ought to have at least twenty-four available jurors, and I will probably give you a list of twenty-six or twenty-seven.

By Mr. Meserow: Could we have additional copies?

By Mr. Thompson: All we need is three or four copies. We don't need a copy for everybody around the place. We need a half dozen copies, I suppose three on each side should be enough, isn't that right?

By Mr. McConnell: Yes.

By The Court: Let's talk about alternate jurors. If you want, you may stipulate that in the event of in-
60 capacitation of one or two jurors, you may go on with ten or eleven, or you may have an alternate or two, so in case one is incapacitated, one can fill in and take his or her place.

By Mr. McConnell: I can't cite the case, but I do know we are entitled to an additional challenge on the alternate jurors.

By Mr. Thompson: That is right.

By Mr. McConnell: I would suggest three alternates. It is going to be a four-week trial anyway.

By The Court: I don't think you need more than two.

By Mr. Thompson: Two is all, and I have no objection to selecting two alternates. I doubt if we will need them, but I have no objection to it.

By Mr. McConnell: The last jury case I tried a year ago, we lost four jurors in the course of it with sickness.

By The Court: All right; I will let you use up your three on the original panel, and then if you need one extra on the alternates, you may have it. That goes for you, too.

By Mr. Thompson: That is the statute, I think.

Another thing is that there are a lot of exhibits in this case. I don't now how many will be offered, but
61 three or four thousand were copied and marked, and I think if we can work out some system by which exhibits could be marked instead of having to leave them or go to the Clerk every time, or the reporter, which takes an

awful lot of time, if it is agreeable, I should think we could mark our own exhibits.

By The Court: Suppose I give you from now until Monday morning to mark all the exhibits before we start in picking the jury and get ready for your trial?

By Mr. Thompson: I was going to inquire whether it is agreeable we do mark our own exhibits.

By Mr. McConnell: That is fine.

By The Court: If you can spend the day and a half—

By Mr. Thompson: It won't take that long.

By The Court: All right; what is next?

62 By Mr. Freeman: Your suggestion, Judge Thompson, is that we mark them numerically ourselves and we will advise you of those as we go along instead of handing them to the reporter?

By Mr. Thompson: That is right, as Plaintiff's Exhibits 1, 2 and 3, and go out as far as you please, and we will mark ours as the Defendants' Exhibits, and I don't know whether they should be lettered or numbered.

Some courts require that you use both, but the trouble is you run out of letters so quick. I got to quadruple "X" in Denver in trying a case recently, and I don't like 28 letters multiplied by four, and I see no reason why Defendants' Exhibit No. 1 isn't as good as Defendants' Exhibit A.

By Mr. Freeman: Yes, that is right.

By Mr. Thompson: The next thing I have in mind is this matter of when we offer an exhibit in evidence, I should think we ought to furnish the other side with a copy of the exhibit then and there, unless we or they already have it. I am inclined to think we all have duplicates.

By Mr. Freeman: We all have duplicates, but we will identify the exhibits so you can pull your duplicates out.

Otherwise, we will give you a duplicate. You don't
63 expect we will give duplicates to all the counsel, and just one duplicate for your side will be enough, if you don't have it already?

By Mr. Thompson: One duplicate to my side, if given to me, will be enough for me. I don't think we need one for everybody.

The next thing I have in mind is that the Court has ruled on pre-trial on a lot of documents, a great mass of these documents, and I assume, of course, that if, in the course of the trial, counsel thinks that one of these documents is, in the light of the development of things, material and competent evidence, he can offer it, so the Court can rule specifically on the particular document, but I should think that these documents, as they are offered, ought to be offered only with identification, if the Court has already ruled on a group of documents, and not any statement made or question asked respecting the document which discloses the document's character until the Court has had a chance to rule again.

That, I think, is essential that no document which the Court has already ruled is immaterial should be disclosed to the jury but should be identified so the Court can rule, if it is desired to have the Court rule again.

64 Another thing is the opening statement to the jury. I appreciate that attorneys, with the experience of those in this case, ought to know how to stay within bounds, but here is a case where there is still, I suppose, a dispute as to whether certain of these documents are or are not to be received in evidence.

65 The Court has ruled, and it has ruled firmly about it, but I assume that they may want to offer some.

As to all the documents where the Court has ruled, I think there should be no reference to the documents or any

reference to the subject matter of the documents in the opening statement, because there is just no way to protect ourselves.

For instance, in an opening statement if they start talking about Interstate Commerce Commission proceedings and actions, which the Court has ruled are not material in this case, and we think correctly so ruled, they may want a new ruling on that in the course of the trial, but certainly, in the opening statement nothing should be said about those things, about Interstate Commerce Commission proceedings or rulings.

The same thing is true about the private transactions of Mr. Cross, which had to do with his real estate transactions. Certainly, nothing should be said about those things in the opening statement, because it is much worse if they are said in the opening statement and then they are ruled out on the trial as we have no chance to meet them at all. The poison has already been injected and the harm done, and it is worse than if there had been no ruling at all.

I feel the opening statement ought to be limited to those things that are not at this stage in contradiction, and each side can certainly outline in general its position in the evidence it produces, but this thing of making a horrendous opening statement in which all the stops are pulled is something that just never can be gotten out of the jury's minds, whatever the evidence received or rejected is, and the defendants can't have a fair trial in this case if that sort of poison is injected in the opening statement when we don't have a chance to get rulings, and the same thing applies to the other matters on which your Honor has already ruled.

They know what they are, and I don't need to detail them.

The same thing is true with respect to the subject matter of these documents on which the Court has already ruled are in a field that is immaterial and irrelevant to the issues. Certainly no questions ought to be permitted to the witnesses in the presence of the jury respecting those issues until the Court has had a chance to rule on them, because the mere asking of a question which the Court sustains the objection on is sometimes more
67 damaging than if the objection had never been made.

All offers of proof should be made out of the presence of the jury. That ought to be so in any case.

I think that is all I need to bring up now. I don't think we need any more pretrial rulings, but those are just usual things that ought to be ruled on, I should think, in a case of this character in order to lay down the rules at the outset so that everybody will have a fair trial. That is all we want.

By Mr. McConnell: All I want is a fair trial. I am just as much interested in protecting my record as Judge Thompson is in his. I am not going to present anything here to the jury that I can't within the rules and your Honor's rulings legally present.

By The Court: Well, the only question here is, as counsel brings out, on the areas of admissibility of documents that I have ruled upon, no reference should be made before the jury until such time when either I change my ruling or they become admissible for some other reason.

68 By Mr. McConnell: I don't think your Honor has to worry about it.

By The Court: I am not worried about it.

By Mr. McConnell: I think Judge Thompson has to worry about what I am going to do with the opening statement.

By The Court: Have both statements of counsel joining with you in opposition to a separation of issues answered your unwarranted charge?

By Mr. McConnell: What unwarranted charge are you referring to now?

By the Court: That it emanated from the defendants.

By Mr. McConnell: Oh, I accepted that when your Honor stated it.

By The Court: I know, but there couldn't be any greater corroboration of it than their getting up in open court and saying they are against the separation.

By Mr. McConnell: I don't need any corroboration. When your Honor states it, that is enough for me.

By The Court: That statement was a reflection on the Court and on counsel, and I resented it. I do not ordinarily take those kinds of insults from lawyers, and I don't want it to go unchallenged.

All right, now, on the question of the rule. Nobody has talked about the Castle case. Nobody has talked about
69 that opinion that cites the Klor's case and takes in all the cases that you have cited there.

I have no purpose in invoking the rule except my general purpose in sustaining a rule which has been sustained in the Second District in an anti-trust case only recently.

In reply to your emotional argument that your clients will be deprived of their right to trial by jury, if you don't give them a chance to hear all of the evidence, we have heard that same charge in a presonal injury case: Why don't we want to inject the extent of damages and injuries into the question of liability?

I said there, and I can say now—though I am not prepared to rule on it. I will look into it again and I will rule on it specifically one way or the other.

70 Some of those issues, if they are improper, don't belong in the trial of another issue. There is no more

reason why the element of conspiracy goes into the charge here, if there is or isn't public injury, and, as Judge Castle said only a few weeks ago, public economic injury.

Judge Castle has answered your argument completely and fully. The Klor case has been cited. The Rogers case has been cited, and all the cases that you have brought up have been cited in there.

Yet Judge Castle precisely in an anti-trust case ruled very specifically, and on the pleadings, not on the trial. I haven't ruled on the pleadings. I haven't indicated how I feel about the pleadings. I have read the briefs. I have read the pleadings. I have read the appeals of the Parmelee case to the Court of Appeals and to the United States Supreme Court. I have read every phrase of it. I am familiar with it.

Separation of issues is not a hardship in my judgment, nor in the other courts' judgments in the adoption of our rule. It is not to save any time primarily, but to squeeze unnecessary sympathy or prejudice from the trial of issues where sympathy and prejudice do not belong and have no place therein.

71 I am familiar with the Congressional Act on anti-trust laws, and they don't require proof of public injury when there is a restriction of production and a raise of prices, which are prima facie proof that the public is being injured somewhere along the line.

It is paramount, and they have defined it, and Judge Castle did not evade it and did not try to go around it. But he said there are some cases specifically that don't come in that category.

I have given that a tremendous amount of thought, and I am going to consider now whether I was right or wrong in holding in this case. I don't have to review the facts. I am not impressed with the argument that this is a

great conspiracy—I want to get the exact words—to restrict trade by monopoly.

72 Now from the pleadings and from the cases before the Court of Appeals and the Parmelee case before the Supreme Court of the United States, the question of monopoly on the contract by one company doesn't enter into it and doesn't belong here. It was a monopoly before the present winner of the contract got it, and it was the same exclusive operation by the same company.

Whether or not the railroads have a right to act concertedly, that has been answered by the Supreme Court time and time again. They have got the right to do it.

Whether or not they have the right to give that contract to one person, that too has been ruled upon in the cases. The courts are replete with those citations. It is a valid contract, unless you disturb it by something else that you bring into it.

That is what I meant when I addressed myself to Judge Thompson, when he raised the question before Judge Sullivan originally that if the contracts were legal and proper in the first place, acted upon concertedly by the railroads, which they had a right to do, given to one individual, which they had a right to do,—there is nothing

73 that could have happened prior thereto that could have made that contract invalid so as to be answerable to a private party who lost the contract.

I have read all that is to be read in this case. As to the monopoly phase of it, giving the contract to one company or to the other, it would have been a monopoly one way or the other. It was in the hands of one company all the time, and the railroads, as I say, had a right concertedly to give it to one company or another company if they wanted to.

You said something about the Court trying to emasculate the anti-trust laws.

The Court is very mindful, very conscious of a public wrong, if it involves corruption. This Court will never condone under any conditions any type of corruption by any public official or by anyone else, individually or collectively, to defeat the laws or to impose upon the public.

The problem in my mind is whether or not they belong under different laws, if such a charge is made. Your argument is based on the theory that you have proved it, and that I am depriving you of the chance to give it to the jury.

All I said was, and all I am thinking about is, that greater justice will be done if we follow the Judge
74 Castle opinion.

I am going to give it some thought between now and tomorrow morning. Judge Castle is just as conscious of public rights as I am, and I am mindful of it, and I have read the cases. The Rogers case is a strong case against it, and he differentiated there. The Klor case, that case was held on the pleadings, not on the proof.

75 I see nothing wrong, nothing improper, to say to both litigants, on the motion of the Court, "Let's get down and try the issue where it belongs, to determine whether or not it belongs under the anti-trust laws."

That is in answer to your charge that you made that I am trying to emasculate the laws; that I have been inspired in my ruling by the defense or someone in that camp.

I want you to know that I have given this thing a lot of consideration. I have studied the briefs. I have studied all the cases. I have followed you carefully on it.

I don't blame you for making that kind of an argument on the law, I mean, but I am not sold on the idea that this comes within the Anti-Trust Act. I haven't been asked

to review Judge Sullivan's ruling, but a lot of law has come out since that time. I will give you five or six cases that have held just adversely to what he ruled in those matters. I am not going to rule upon it.

It is before me. I am sustaining the pleadings. I am letting you prove it. I will decide tomorrow morning whether it is a separate trial or a trial on all the issues.

If you want until Monday morning, I will give
76 you the time until Monday, not to rush you, and I will tell you why. It is a weekend. You might take the whole day tomorrow to pick the jury, and go on Monday morning with the trial.

By Mr. McConnell: If we are going to have a ruling Monday morning, I suggest we go to Tuesday because—

By The Court: I am going to give the ruling tomorrow morning. I will be ready this afternoon, but I want you to spend your time on the exhibits.

I would like to say one more thing. We have had the same situation of wrangling on the rulings on the admissibility of documents, and I have to review page by page and reference by reference to refute the charges made on those rulings.

This is just another lawsuit. I know it is an important lawsuit. If you come within the anti-trust rules and regulations and the Act of Congress, it is most important to the public, vitally important. I want to give it all the consideration with all the fairness that each party has coming to him, fully, and with no limitations, but within the confines of the law as I see it, without haranguing and without abuse.

All right, tomorrow morning.

77 By Mr. Thompson: If the Court please, I think your Honor ought to know that counsel suggested we have Mr. Feucht here as one of the early witnesses, and Mr. Feucht is here. He is the Deputy Secretary of the

Army, and of course can't be away from Washington any more than he just has to be.

I didn't want it to go over to Monday or Tuesday—

By The Court: Tomorrow morning.

By Mr. Thompson: Tomorrow morning, maybe we can get through with him. If not, we can have him on by Monday.

By Mr. Owens: Your Honor, I represent Mr. Cross. I haven't spoken so far, and we are interested. Mr. Cross has been under a cloud since this started. These unfounded charges have been made against him, and we are interested in getting this issue tried.

We feel the issue which the Court is now talking about, whether or not it is a question of competition here or the creation of monopoly, can be disposed of only with a full hearing of this case, and we would like to have it heard, and not incur the problems of a retrial at a later date.

By The Court: My opinion has been that in our system of jurisprudence, whether civil or criminal, a
78 charge of fraud or irregularity or conspiracy hasn't any standing until it is proved, under our system.

By Mr. Owens: That is true, but—

By The Court: I am not concerned so much with vindicating anybody or following the wishes of either side. I am here to administer justice as I see it, and if I think for one minute that that is the way, I am going to follow it.

You have helped me by saying it is only four weeks instead of four months. I was under the impression all the time that this was a four-month or three-month case.

I will decide it tomorrow morning. Eleven o'clock, gentlemen.

(Thereupon an adjournment was taken to 11:00 o'clock, a.m., of the following day, April 22, 1960.)

79

* * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Friday, April 22, 1960,
11:00 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

80 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

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81 And thereupon the following further proceedings were had herein:—

By The Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.

By Mr. Meserow: Before your Honor makes his ruling, may I make a short statement, please, your Honor?

By The Court: Yes.

By Mr. Meserow: I read in the press this morning about the position of the various lawyers, and I was included with the other lawyers, and I think erroneously.

By The Court: That is exactly what you did. You stepped up, and you said openly that you were going along with your senior counsel, Judge Thompson.

By Mr. Meserow: I didn't say that. I said I would welcome a full dress hearing in order to vindicate the false accusations.

By The Court: The record speaks for itself.

By Mr. Meserow: However, I am in favor of a separate issue trial. I have checked the cases again yesterday after we were here. I talked with my client yesterday, and I want to say this to your Honor, that I say Judge Castle's decision in this circuit is directly in point, and it 82 gives this Court ample atuhority to separate the issues.

I don't know what your ruling is going to be, your Honor.

By The Court: Nobody else does.

By Mr. Meserow: I am in favor of it, and so are my defendants.

By Mr. McConnell: If the Court please, before you make your decision on it, I want to advise the Court we want to file a motion for change of venue in this case.

By The Court: Motion overruled.

By Mr. Freeman: I join in that motion. We have not filed it yet.

By Mr. McConnell: We would like to file it.

By The Court: When you file it, I will consider it.

By Mr. Borst: Your Honor, may I file my appearance for the New York Central?

By The Court: Yes.

As I stated yesterday, I have studied all the briefs, pleadings and transcripts in this case. I have read much

of the law pertaining thereto, especially the numerous decisions that came down since Judge Sullivan ruled on the motions to strike five years ago.

83 It has been worrisome to the Department of Justice, to the Supreme Court of the United States and to the District Courts. Protracted litigation in anti-trust cases has been a subject of frequent discussion, and all are determined to bend every effort to shorten litigation with due regard for the administration of justice.

Although five years old, and the contract in controversy is about to expire, the principal defendant has been trying to continue the matter from time to time until the Court entered an order for immediate trial. Plaintiff's counsel have sought to continue it until the fall, so all the discussion about any delay that may result from an appeal sounds rather weak.

One of the principal arguments before Judge Sullivan as presented in the briefs was the fact that the question of the contracts involved lie strictly within the jurisdiction of the Interstate Commerce Commission. Judge Sullivan ruled against it before those decisions were handed down, but since his ruling our own Court of Appeals in Atchison, Topeka & Santa Fe v. City of Chicago, 240 Fed. 2d 930, and the United States Supreme Court in the same case, 357 U.S. 77, have held that the servicing controversy

84 was under Interstate Commerce Commission jurisdiction and could not be interfered with by the City of Chicago. The plaintiff in this case intervened in those cases and is now bound by that decision.

Since Judge Sullivan's decision, numerous cases have held that private suits under Title 15 U.S.C. are maintainable only when the defendant's conduct has caused some injury to the public generally as distinct from purely personal or private damage.

Even in the Klor case, and I am mindful that it was reversed on the question of the pleadings and affidavits, not on trial, but in Klor vs. Broadway, 255 Fed. 2nd, 233, cited by the plaintiff, the Court held, and I quote:

85 "Where there is no conceivable way in which a substantial segment of the public can be injured by the conduct attacked, the Sherman Act is not violated."

The Court has read all the cases cited by plaintiff's counsel, and with all due regard to them, they have no application to the question in controversy under the above law.

This is a case where public injury must be established as a prerequisite to sustaining the plaintiff's right to recover. Defendants have all agreed that the Court has power to separate the issues as most recently held in Marks Food v. Barbara, 274 Fed. 2d, 934.

This Court has adopted a rule for the separation of issues and is determined to enforce it wherever lawful and proper. It is intended not to expedite litigation

86 only, but to present issues before a jury free from rancor, prejudice and sympathy?

There is a far greater issue involved in this case in not applying this rule. The Court must abandon its determination that public economic injury must be established in this case. Contrary to all the cases cited by the plaintiff, this is the most recent law laid down by our own Seventh Circuit, Radiant Burners vs. People's Gas, 273 F. 2d 196. This Court will follow that law and will enforce it even if it is tried on all the issues.

With all due regard to counsel for the defense, who are very able and industrious lawyers, the Court must reject their determination to vindicate the defendants in a civil matter. I am concerned only with legal propositions.

Furthermore, in the opinion of this Court, if plaintiffs fail to establish public economic injury, the record will remain silent on their vindication.

Most of the cases cited by counsel for the plaintiff refer to the sufficiency of the complaint. The same is true in the case laid down by Judge Castle.

In the case before me, they are being given the
87 opportunity to try the issue before a jury; and if sustained, to proceed with the remaining issues before the same jury.

Accordingly, I now order the parties to proceed on the single issue of public economic injury.

Plaintiff has challenged the power of the Court to enter this order. I accept the challenge. Contrary to plaintiff's arguments, the Court can direct properly the proceedings in a lawsuit before it.

Proceed to trial. Send for a jury.

88 By Mr. McConnell: Your Honor, we are making a motion for change of venue.

By The Court: The motion is denied. The case is on trial.

By The Clerk: It has to be supported by affidavits.

By The Court: The case was called for trial yesterday, and I said it was on trial.

By Mr. Freeman: Are we going to be permitted to file such an affidavit and motion?

By The Court: I am not going to discuss it with you now. You follow your own practice. The case is on trial. I am sending for a jury.

By Mr. McConnell: If the Court please, I would like to make a statement. I don't know whether any purpose is served by—

By Mr. Thompson: The jurors are here.

By Mr. McConnell: I want to speak outside the presence of the jury, your Honor.

By The Court: All right, step in chambers and I will hear you.

(Whereupon the following further proceedings were had herein, in chambers.)

By Mr. McConnell: I made an argument before your Honor yesterday in which I stated that I thought any separate proof or any separate trial of an issue of
89 economics or difference of service between Parmelee and the Keeshin company was an irrelevant issue in this case.

I wasn't just making a captious argument. I was making an argument in which I believed, and on which I was prepared to stand.

Now all I want is the right to make a record here. I don't want to waste the time of jurymen or lawyers or your Honor.

By The Court: Make all the record you want.

By Mr. McConnell: Now here is what we propose if it is acceptable to your Honor.

Any offer of proof that we make, we would have to make outside the presence of the jury anyway. I have no intention of offering any proof other than the conspiracy proof under our complaint.

I am not proposing to offer any proof of the differences in services or the economic injury to the public, the things that your Honor, I take it, has in mind—

By The Court: That is right.

By Mr. McConnell: Because yesterday you said that you were not going to entertain proof of conspiracy or monopoly.

By The Court: Not on this one issue.

90 By Mr. McConnell: No on this one issue.

Now that being so, I just don't want to waste time picking a jury here when I am not going to present any evidence before it.

I would like to make an offer of proof, which I have to make outside the presence of the jury anyway, as I understand it. Isn't that right, Judge Thompson? Isn't that our arrangement, that we will make all offers of proof outside the presence of the jury?

By Mr. Thompson: That is right, Mr. McConnell, as I understand it.

91 By Mr. McConnell: So the question is, do we need to technically impanel a jury here? I will follow your Honor's wishes.

By The Court: I will follow the law on the offer of proof out of the presence of the jury.

By Mr. Freeman: Then should we just take the first twelve men and impanel them, under the understanding that we will excuse the jury and make an offer of proof?

By The Court: Yes, you may do that.

By Mr. McConnell: I suppose you would have to then direct the jury on that issue.

By The Court: I don't see any objection to it.

By Mr. McConnell: Is that all right with you, Judge? Suppose we take the first twelve men that come up?

I am not going to put in any evidence. It will be an offer of proof made outside the presence of the jury.

By Mr. Thompson: Well, I must confess—

By Mr. Meserow: Could we have a little conference?

By Mr. Thompson: Now, just a minute. I don't need any advice.

I must confess that this dealing off the seat of my
92 pants in this fashion is something new to me. I don't know.

Now as I understand your proposal, it is that we put twelve people in the box and swear them as the jury; that you make an offer of proof—

By Mr. Freeman: Which is rejected.

By Mr. Thompson: I don't know that it has been decided that it is rejected. I presume the Court is going to decide these matters as they are presented.

Now, you make your offer of proof. I would anticipate from what the judge has already announced that he would reject your offer of proof, but I certainly can't underwrite it.

Then if your offer of proof is such that we can't accept it is an offer of proof—now, of course, if we object to your offer of proof, I suppose that is sort of like a demurrer, isn't it?

We admit that what you offer to prove is what you can prove, and we say that assuming he proved it, why, he hasn't any basis for it.

Now that is what puts me on the spot because you make your offer of proof—

93 By The Court: No. You make an objection it is contrary to my ruling in this case.

By Mr. Meserow: Not material to the issue of economic injury.

By The Court: Neither admit nor deny, but contrary to the Court's rulings. I intend to stand by those rulings.

By Mr. Thompson: Your offer of proof which you propose to make is not going to incorporate this matter of public injury except that it arises out of any conspiracy?

By Mr. McConnell: Yes, that is my point. That is what I argued. I want the question raised and determined.

By Mr. Thompson: I didn't quite get clear that that is what you argued. I thought I knew what you argued, and I think I still know.

By Mr. Freeman: We will not offer any separate proof on public economic injury.

By Mr. Thompson: I know, but I may have to do some offering of proof. In other words, I may want to offer proof that there is public injury. I don't know why I need to when you are not offering any that there is. I don't know why I have to prove the negative, but I must confess that I am a bit at sea.

94 By The Court: If you want to take time until Monday morning?

By Mr. Thompson: I don't need until Monday morning.

By The Court: 2:00 o'clock?

By Mr. Thompson: 1:00 o'clock.

By The Court: I want this record to be as complete as we know how.

By Mr. McConnell: Now one thing, I have a very dear friend that died, and I have got to go to his funeral at 3:00 o'clock this afternoon. I may not be here.

By Mr. Owens: I want to say something—

By Mr. Thompson: None of us may be.

By The Court: I will say this to you again, I will make it Monday morning.

By Mr. McConnell: Let's make it Monday morning.

By Mr. Owens: Can I say something on this?

By Mr. Thompson: I don't know why we should make it Monday morning. Can't we come back at 1:00 o'clock?

By The Court: 1:00 o'clock is all right.

By Mr. Thompson: And you can make it out to the funeral.

By Mr. McConnell: I have to go out there at 3:00 o'clock, to Wilmette.

By Mr. Thompson: That is quite a ways. If you left here at 2:00 o'clock?

95 By Mr. McConnell: I could make it.

By Mr. Thompson: Suppose we come back by 1:00 and by then maybe I will know what I can do with your proposal. I must confess this is a fast pace.

By Mr. McConnell: I don't think anybody has ever done it before, I will agree with you on that.

By Mr. Thompson: Of course, that doesn't prove it can't be done, I guess, but I am a little old to try new experiments.

96 By Mr. Owens: Judge, this case has been called for trial. The jury demand has been made by the plaintiff. It is that jury which will have to determine whatever issues are going to be tried in this case.

So I don't believe in this just impaneling people, sort of a provisional jury. I think if we pick a jury, it is a jury.

By the Court: I am not recommending it. I am not sanctioning it. I am not disapproving it.

Counsel are very able. They have a right to impanel the jury and make any offer of proof they wish. I welcome it. I want the record to be as complete as is humanly possible. I want Judge Thompson to have the right and you to have the right—

By Mr. Owens: But they don't make a prima facie showing.

By the Court: You represent Mr. Cross?

By Mr. Owens: Yes, sir.

By the Court: And you represent Keeshin and Parmelee.

By Mr. Freeman: Mr. Meserow doesn't represent Parmelee.

By the Court: I mean Keeshin and Railroad Transfer Service.

97 I want the record to be as clear from your point of view. If you want to make a counter offer, you may do so. I intend to stand by my ruling.

This is a separate and distinct issue, and we will rule that any other evidence that is being offered independent and outside of that one issue is irrelevant, immaterial, and not admissible, and improper. I will sustain that objection and will strike it from the record.

By Mr. McConnell: Could we have an order to that effect, a written order, draft order?

By Mr. Thompson: Just a minute—

By the Court: I will write an opinion when you get through with it.

By Mr. Thompson: I say, wait just a minute, now. Then as I understand it, you offer your proof to the jury. You omit to offer any proof on the issue.

By Mr. McConnell: I am not going to offer a bit of proof except on the conspiracy issue.

By the Court: He says he will not offer any proof on the question of public economic injury.

By Mr. Freeman: We are not going to compare Keeshin and Parmelee as to rates, service, or anything else.

By the Court: They will not offer proof on higher rates or service.

By Mr. Thompson: We are going to compare them.

98 By Mr. Owens: If they make no prima facie case, we should make a motion for judgment by default.

By the Court: That will follow next.

By Mr. McConnell: It ends up as a direct verdict.

By Mr. Thompson: It is obvious it will be a directed verdict for the defendants on this issue.

By Mr. McConnell: That is correct, and that is the only issue we can try.

By Mr. Stevens: I think one thing should be made clear, and I would like to understand your Honor's ruling.

By the Court: You mean I haven't made my position clear here?

By Mr. Stevens: Any evidence of conspiracy to eliminate competition for the Transfer Service would be inadmissible?

By the Court: I will make my ruling when you make your offer. I will make the ruling on the offer you make. I stand by my original ruling that we are trying the sole and only issue of public injury as a prerequisite that the plaintiffs try to recover.

99 By Mr. Stevens: What we still don't know is whether evidence of conspiracy is admissible under that ruling?

By Mr. McConnell: We are going to know it when we offer it.

By the Court: You will know it when you offer it and I make my ruling on the offer. I intend to write an opinion when the whole case is terminated one way or the other.

By Mr. Thompson: Is it all right if we meet at 1:00 o'clock?

By Mr. McConnell: What are we going to do at 1:00?

By Mr. Thompson: I should know?

By Mr. McConnell: I want to know if I can get away, that is all.

By Mr. Thompson: I understand what you are going to do is just what you said you were going to do.

By Mr. Meserow: Except for this —

By Mr. Thompson: Wait a minute.

By Mr. Meserow: Can I say something, please?

By Mr. Thompson: All you want to, go ahead.

By Mr. Meserow: It may be that we will want to pick a jury, not just take the first twelve. In which case, we wouldn't be out in time for Mr. McConnell.

By the Court: I haven't prescribed a method of selection of the jury, and I don't propose to. I am not depriving either side of their rights in this case. I am trying a lawsuit.

By Mr. Freeman: May I suggest you recess for a half hour, and possibly Mr. Thompson can decide?

By the Court: I will recess for an hour, to 12:30, or sooner, if you call me.

By Mr. Freeman: All right. That is good enough.

By Mr. Thompson: 12:30 is fine for me, and if the Court isn't going to be engaged during the noon recess —

By the Court: I have nothing else all day.

By Mr. Thompson: Suppose we convene at 12:30 and go ahead with whatever we decide to do? If we decide that we can accept your suggestion, then we can do it and it will be over with pretty quick. If we can't, it will have to go over to Monday.

By Mr. McConnell: I am only trying to save your time.

By Mr. Thompson: I thank you for the kind suggestion.

By the Court: All right, 12:30.

(Thereupon a recess was taken in the hearing of the above-entitled cause to 12:30 o'clock p.m. of the same day, Friday, April 22, 1960.)

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

In the

United States Court of Appeals

For the Seventh Circuit

No. 13160

PARMELEE TRANSPORTATION COMPANY,

Plaintiff-Appellant,

vs.

JOHN L. KEESHIN, RAILROAD TRANSFER SERVICE, INC., HUGH W. CROSS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD E. SIMPSON, PAUL E. FEUCHT, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Div.

Honorable James B. Moran, Judge Presiding.

APPENDIX

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Lee A. Freeman
105 S. LaSalle Street
Chicago, Illinois

Thomas C. McConnell
134 S. LaSalle Street
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Herbert B. Lazarus
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Chicago, Illinois

Attorneys for Plaintiff-Appellant

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101 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

Chicago, Illinois
Friday, April 22, 1960
12:30 o'clock, p.m.

Court convened pursuant to a recess.

PRESENT:

Mr. Thomas C. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;
Mr. Albert J. Meserow,
on behalf of Defendants John L. Keeshin and Railroad Transfer Service;
102 Mr. Joseph C. Owens,
on behalf of Defendant Hugh W. Cross;
Mr. Martin J. Keating,
on behalf of Defendant The New York Central Railroad Company;
Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

103 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

By Mr. Thompson: If the Court please, after careful consideration of the generous offer of my brother McCon-

nell, we cannot accept it, and we ask that the case proceed to trial in the normal course.

By the Court: Send for a jury. Two o'clock for trial.

By Mr. McConnell: I asked leave to go to a funeral. I wonder if we can start this case Monday morning?

By the Court: I can't be harsh to you on that point. I am not going to do it. Monday morning. That is not your fault or anybody else's fault. Monday morning at eleven o'clock. I have a long call, and I don't want to keep you waiting.

Gentlemen, I have lists of the jurors.

By Mr. Freeman: You have given that to us.

By the Court: I am going to hold the same jury until Monday morning.

(Thereupon, an adjournment was taken to 11:00 o'clock, a.m., on Monday, April 25, 1960.)

104 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Monday, April 25, 1960,
11:00 o'clock a.m.

Court convened pursuant to an adjournment.

PRESENT:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;
Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;
Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;
105 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

106 And thereupon the following further proceedings were had herein:

By the Clerk: No. 56 C 323. Parmelee Transportation Company v. John L. Keeshin, et al. The case on trial.

By the Court: Send for the jury.

Swear in the jurors.

(The jurors were sworn to answer questions.)

By the Court: I have excused one juror named Ann Arado. There was another one.

By the Marshal: Another one coming to work this morning, Georgia Malone, was hurt.

By the Court: All right.

By the Marshall: Carrera, Bonnema, Beck, Andel, Berlin, Frahm, Kula, Delgado, Henderson, Hill, Kasner, Kisley.

107 By the Court: The plaintiff will please introduce his case and the parties, and then I will talk to them for a few minutes.

By Mr. Thomas McConnell: Pardon me, your Honor? I didn't hear you.

By the Court: The plaintiff will please introduce the case and the parties, and then I will address the jurors.

By Mr. McConnell: Ladies and gentlemen, this is a case which is brought under the Federal Anti-Trust Laws, Sections 1 and 2 of the Sherman Act to be more specific. It is brought by the Parmelee Transportation Company, which is a Delaware Corporation, but which is authorized

to do business and has been doing business here in the State of Illinois.

The defendants are John L. Keeshin, who is the chief stockholder, probably the only stockholder, I guess, of his company which is doing transfer business here in Illinois, which I will refer to in a moment.

Hugh W. Cross; I don't know what his business is at the moment, but he was formerly a member of the Interstate Commerce Commission and was at one time chairman of that Commission. I don't know what he is doing now.

108 Howard E. Simpson is president of the Baltimore & Ohio Railroad.

Paul E. Feucht is former president of the Chicago & Northwestern Railroad.

Wayne A. Johnston is president of the Illinois Central Railroad.

Fred G. Gurley, another individual defendant, was president of the Atchison, Topeka and Santa Fe Railroad, which we usually call the Santa Fe.

Then we get to the corporations which are defendants.

Railroad Transfer Service, Inc. is a Delaware corporation which was organized by Mr. Keeshin, individual defendant, to carry on the railroad transfer business, transporting baggage from one terminal to another in the City of Chicago. That is a corporation of which he is the principal if not the only stockholder.

Then there is the Atchison, Topeka and Santa Fe Railway Company, a Kansas corporation, which as you know, is a railroad.

Then there is the defendant, the Baltimore and Ohio Railroad Company, which is a Maryland corporation that comes into the City of Chicago through the B&O terminal down on Wells Street.

109 Then there is the Chicago and North Western Railway, which is a Wisconsin corporation; the Illinois Central Railroad Company, an Illinois corporation; the New York Central Railroad Company, an Illinois, New York, Ohio, Indiana, Pennsylvania and Michigan corporation.

Then there is the Pennsylvania Railroad Company, which is a Pennsylvania corporation.

Then there is Western, and then there is a John Doe defendant, which is sort of a catch-all of people who might be conspirators or the proofs might find to be conspirators and so designated.

Is that as far as you want me to go?

110 By the Court: The names of the lawyers, please, for both sides.

By Mr. McConnell: Well, the plaintiff is represented here by myself as an individual. I don't think my firm name is in this. Thomas C. McConnell is my name.

Then there is Lee Freeman, who is not here this morning, but will be here tomorrow; and Mr. John Stevens who sits at my left. None of our firms have entered their appearances here, just individual lawyers.

Assisting me is Mr. John Borst, and my son, Francis J. McConnell.

On the other side at the other table is former Judge of our Supreme Court, Floyd Thompson, and Mr. Philip Tone, seated behind him. Mr. Meserow, seated across the table. Then Mr. Joseph Owens who represents Mr. Cross, I believe.

That is all, I believe.

By Mr. Tone: And Mr. Keating, representing the New York Central.

By the Court: All right.

By Mr. McConnell: I don't know that I can name all

the members of these firms. I don't know that I know them.

111 By the Court: I don't either, all of them.

I am going to talk to all of you back there and in the jury box, so you can hear me, I hope.

This is a civil case, as counsel told you, commonly known as an anti-trust case, as distinguished from a criminal case where the burden on the Government is to prove a defendant guilty beyond a reasonable doubt. In a civil case, the plaintiff is required to prove his side or their side by the preponderance or greater weight of the evidence. That means if the scale were to have the evidence of each side, which ever one tips over has the preponderance of the evidence.

You have heard the names of the parties on both sides and also the lawyers. Are any of you familiar with either side or any of the parties in this case or any of the lawyers?

112 By Juror Jay L. Mann: I am, sir.

By the Court: What is your name?

By Juror Jay L. Mann: Jay L. Mann.

By the Court: Where do you live?

By Juror Jay L. Mann: 723 Ashland Avenue, Wilmette.

By the Court: What is your acquaintanceship?

By Juror Jay L. Mann: We do business with all the railroads that were mentioned, the majority of them, Highland Electrical Supply; and Jack Keeshin's daughter is married to Lee Gatner, who is a personal friend of mine.

By the Court: All right. We will get to you later. Your name, please?

By Juror Victor J. Georgen: Victor J. Georgen, with the Railroad Express. I am familiar with Mr. Collins, who is assistant general manager of Keeshin.

By the Court: All right. We will get to you later. Do any of you have any reason why you cannot sit in fair judgment in this type of case?

We are going to try this case under the rules of our court on just one issue to start off with, and that is public injury. It will be incumbent upon the plaintiff to establish that issue by the preponderance or greater weight of the evidence, and you are not to be concerned with any
113 other issues in the case except whether or not the public has sustained any injury in this case.

Is that clear? No other issues are to be decided or tried by you at this time.

You are the sole judges of the facts in the case. No one, not even I, has any right or intent to intimate to you or direct you or advise you how to decide on the facts in this case. Nothing that I say or do will have any such tendency to influence your judgment in the least on the facts in the case.

On the other hand, I am the sole judge of the law in the case, and it is incumbent upon you to take the law as I give it to you. Is that clear? It doesn't mean that I am infallible, but that is my job, and I will try to give you the law as I see it, that is fair and just.

114 Now the lawyers are going to be permitted to ask you some questions about your qualifications as jurors. It doesn't mean that they are going to try to pry into your personal affairs. They have a right, under the law, to look into your inner thinking to see whether you have some notions, some attitudes that may or may not influence your judgment for or against them unduly. So I don't want you to feel any personal affront to either of the lawyers who are going to question you.

In the course of the trial, the lawyers are going to make objections to some questions, maybe some answers, and I am going to rule upon those objections.

First, I want you to know that they have a perfect right to make those objections. It is part of their duty to try the case, and that is part of the trial, part of our system of jurisprudence. I don't want you to feel any personal affront in the fact that I sustain or overrule the objection or their making one or more or as many as they wish. They have a right to, and my rulings do not indicate any judgment on the outcome of the case. I am merely calling the shots as I see them on that particular objection or that particular motion. Is that clear?

115 Now if something is said or done that has no place in the record according to my best judgment, I am going to say it may be stricken from the record. That means that I have no way of erasing it from your minds or taking it out of the record physically, because it has been said and done. So the best I can do is ask you to please forget about it. If I say it may be stricken, you have got to disregard it as though it had never been said in the record. Can you do that? That is the fair way of conducting a lawsuit.

Now, is there any reason why any one of the jurors here cannot give both sides here a fair and impartial trial? That is the primary purpose in the administration of justice, to be fair to both sides, and to give them an absolutely fair and impartial trial.

Have any of you had any experience with any of the parties or in any matter that would prejudice you for or against either side?

Do any of you have any relatives employed by any of the railroads besides those two that I have talked to?

Now, one of the most important things in the trial of a lawsuit is that we must permit no sympathy or prej-
116 udice to influence our judgment one way or the other, for or against either side. Is that clear?

Now, you are to consider only the testimony given to you from the witness stand, which the Court allows to stand as valid testimony, and that is the testimony from this stand under oath. Nothing else is to influence your judgment.

Counsel have a right to comment upon it in their final deliberations, to sum it up, and what they say is their own opinion, but it is not the testimony, either in the opening statement or in the final arguments.

You are only to be bound by what is given to you under oath from the witness stand as you have heard it, and you are the sole judges of the credibility of the witnesses. You yourself are to determine which witness is telling the truth and which witness is lying, or how much of it is truthful and how much of it is false, and you are to give it that much weight and credibility as, in your honest judgment, they are entitled to. Is that clear?

You have taken into consideration the corroboration by other credible evidence. That is important. Is that clear?

You are not to discuss this matter with anyone, not even among yourselves, and you are to permit no one to talk
117 to you about this case in the elevator, the lobby, or anywhere on your way home or at your homes. If anybody talks to you about it, I want you to report him to me.

118 No one must influence your judgment or try to in the least possible manner. Is that clear?

I don't want you to discuss this case among yourselves until all the evidence is in, until my instructions to you are given, until counsel have made their final arguments and until you will have retired to deliberate on the final judgment of the case. Is that clear?

There is a good reason for that. Some juror may have come to an earlier decision than others, but he or she

hasn't heard all the evidence. It won't be fair to discuss a case from that point until all the evidence is in, until you have had the benefit of my instructions on the law, until you have had the lawyers sum it up before you, so let's not discuss it, if you please, among ourselves, among yourselves, or with anyone else until you will have retired into the jury room for your final deliberations. Is that clear?

This is a great responsibility under our system of jurisprudence. You are sharing the administration of justice with the Court. There are very few countries in the world that have that privilege, and it is a serious responsibility.

It will require all the integrity and honesty and devo-
119 tion to the American ideals to be fair and impartial to both sides. Can you do that?

All right; you may proceed with your examination.

By Mr. McConnell: If the Court please, with all due deference to your Honor's statement, I think something should be said to this jury about what this case is about.

I would like to do that, but I don't want to run afoul of any of your rulings.

By the Court: You may do that on the question, on the issue as I have limited it.

By Mr. McConnell: Can we discuss this outside the presence of the jury?

By the Court: Yes, sure. All right; let's go in chambers.

(And thereupon the following proceedings were had in chambers outside the presence and hearing of the jury.)

By Mr. McConnell: Let me say at the outset here, I am not interested in getting into any troubles back and forth between Court and counsel. I just want to be able to make a record here, because it is obvious this case is being—we

are doing all we can to set it up as a test case on this
120 particular issue, but I think that within the scope of your Honor's ruling that I should be allowed to tell the jury at least what kind of business we are dealing with.

By the Court: Yes; I have no objection.

By Mr. McConnell: That the business is carrying passengers, baggage, coupons, and so forth.

By the Court: There is no question about that.

By Mr. McConnell: Otherwise, I don't know how I can examine them intelligently what this is about.

By the Court: You may describe to them the nature of the business of the plaintiff and the defendant and the type of work they are doing and anything except the conspiracy which resulted in this alleged violation.

By Mr. McConnell: That is, I can't mention conspiracy in the statement, or monopoly?

By the Court: Not on this particular element of proof.

By Mr. McConnell: Well, that is some help to me. At least it tells the jury.

By the Court: I never intended to withhold from the jury any such issue. Those are the facts upon which you are trying to prove damages or public injury.

By Mr. McConnell: All right; that clarifies it.

By Mr. Meserow: Wait a minute, now. After Mr.
121 McConnell makes an opening statement, I presume we would like to make a statement, too.

By the Court: This is not an opening statement.

By Mr. Thompson: This is not an opening statement.

By the Court: This is just for the qualification of the jurors.

(And thereupon the following proceedings were had in open court in the presence and hearing of the jury.)

122 By Mr. McConnell: If your Honor please, ladies and gentlemen, this is not an opening statement of

the case or anything of that kind. It is just a preliminary statement so that you people will know at least in bare outline what we are talking about in this case so you can answer the questions as to your qualifications or as to whether this kind of a case is one which you can or cannot fairly deal with.

This case was originally brought under Sections 1 and 2 of the Sherman Act which I am not going to define.

Under a provision of the rules of our court, his Honor, as he has told you, has singled out for what we might call a pre-determination, an issue which is characterized and described by the Court as one of public injury.

I think, even before we can deal intelligently with whether you think you can properly or fairly try that issue, that you have to know what the nature of the business is that we are talking about here.

There was a committee of six railroads, which are six railroads made defendants, and they were appointed by a terminal association composed of twenty-one railroads, which are practically all the railroads which use terminals here in the City of Chicago.

As you probably all know, Chicago is unique in respect to the railroad business. I don't know of any other city like it, where railroads come in from the east or the south or the west and end here, so that when a passenger decides to go by railroad from New York to San Francisco, he takes a railroad that ends him in Chicago, and then he has to get from one railroad station to another, depending on which route he is traveling, and take another line out of Chicago on his journey further west.

The subject that we are dealing with here in this lawsuit, even on this limited issue, would be the commerce which is involved in carrying that passenger by maybe two or maybe even three railroads, from one section, let's

say the eastern section, to the western section of the country.

To take care of that situation, the railroads for a period of some hundred years had worked out a system with the Parmelee company, which is the plaintiff in this case, whereby for a coupon, which was attached to the ticket which was sold that interstate traveler, he would not only get his transportation into Chicago and out of Chicago,

but he would be taken, together with his baggage in
124 exchange for this coupon put on his ticket, across the

City of Chicago or wherever he had to go from one station to the other so he didn't have to pay a taxi fare or any other fare to get him from the station which he ended up in, in Chicago, to the station out of which he was going from Chicago.

That business, and you have probably all used it, was a system of cabs, in the old days with horses. I remember when I first started using that system they didn't have horses in those days, but they had automobiles, and that evolved into a system of limousines, and now they have station wagons, I think, that are used.

It is a simple business of carrying passengers and baggage from one station to another as part of a journey whereby usually more than one railroad is used.

That involves railroad employees. It involves employees of the transfer company itself. It involves your connections with possibly any one of these twenty-one railroads who are members of the association, because this particular committee that we are talking about was a committee appointed by all of those twenty-one railroads.

As you can surmise, I assume, this lawsuit arose out of the fact that one transfer agent was superseded by another,

and the issues which we allege in our complaint under
125 Sections 1 and 2 we are not trying at the moment under the Judge's ruling.

There is no need, and I can't discuss those issues with you under the Court's ruling, and so if there is anything involved in that, I don't know what we will do with that, except I am not free to discuss them.

The only thing we have to discuss here, I guess, is whether or not the public is damaged by having Mr. Keeshin's company supercede the Parmelee Company.

With that in mind, I would like to examine you people individually on various qualifications here.

By the Court: May I suggest, Mr. McConnell, that you examine them four at a time as a panel, if you please, the first four, and then we will go on with the next four.

By Mr. McConnell: Very good.

I am going to ask, if I may, your Honor, a few preliminary questions which involve everybody so I won't have to ask them over and over again.

By the Court: You may. That goes to all of you, ladies and gentlemen, in the box and also in the seats.

By Mr. McConnell: These are the railroads that are involved in this terminal association that I spoke to you about a moment ago. The first on the list is the 126 Atchison, Topeka and Santa Fe Railway Company, and then there is the Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railway Company, the Chicago and Eastern Illinois Railroad Company, the Chicago and North Western Railway Company.

The Chicago, Burlington and Quincy Railway Company, the Chicago Great Western Railway Company, the Chicago, Indianapolis and Louisville Railway Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Chicago, North Shore and Milwaukee Railway, the Chicago, Rock Island and Pacific Railroad Company, the Chicago, South Shore and South Bend Railroad.

The Erie Railroad Company, the Grand Trunk Western Railroad Company, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad, the Minneapolis, St. Paul and Sioux Ste. Marie Railroad Company, the New York Central Railroad Company, the New York, Chicago and St. Louis Railroad Company, the Pennsylvania Railroad Company, the Wabash Railroad Company.

Have any of you people had any business dealings, aside from just as passengers, with any of those companies?

By a Juror: I was employed by the Illinois Central
127 Railroad some years ago back during the war, as a weigh master and also as a yard clerk.

By Mr. Thomas McConnell: Can we have that juror excused, your Honor?

By the Court: How long ago was that?

By a Juror: During the war years, 1942 and 1943.

By the Court: Would that in any way influence your judgment now for or against the company?

By a Juror: No.

By the Court: That is the answer.

By Mr. McConnell: We will excuse him for cause.

By the Court: He may be excused.

By Mr. McConnell: I mean a peremptory challenge to that juror.

By the Court: All right; he is excused.

By the Marshal: Wasserman.

By the Juror: I grabbed numbers for the Grand Trunk Railroad about forty years ago.

By Mr. McConnell: And your name is?

By Mr. Hilb: Harry A Hilb.

128 By Mr. McConnell: I will return to your Honor's suggestion of the panel questions.

MICHAEL A. CARRERA, a member of the panel of veniremen, having been first duly sworn, was examined to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. The first gentleman in the first row, your name?

A. Michael A. Carrera.

Q. What is your business or occupation?

A. I work for the Gazoolo Drug and Chemical Company.

Q. How long have you worked for that company, Mr. Carrera?

A. I have been there about nine years.

Q. Do you know of anything in your experience that would in any way make it impossible for you to give these litigants a fair trial?

A. No, sir.

Q. You never had any troubles of any kind with the railroad?

A. No, sir.

Q. Or with the Parmelee company?

A. No.

Q. Do you know anybody working for these railroads?

129 A. Well, it seems to me one of my nephews works for the Chicago & North Western Railroad. However, I am not acquainted with the type of work that he does, nor do I know exactly where he works.

Q. What is the nature of this chemical company for which you work?

A. Well, we service drug stores, hospitals and clinics in the Chicago area with their drugs, and we also sell sundries, cosmetics and virtually everything that is sold in a drug store.

Q. Do you know whether you do any business with the railroads here or with the terminals?

A. No, I really don't. Most likely not.

Q. Have you ever been in any litigation of any kind?

A. No, sir.

WILLIAM P. BONNEMA, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. The next gentleman in the front row, your name?

A. William Bonnema.

130 Q. What is your business or occupation, Mr. Bonnema?

A. I am a wood machine operator in a sash and door mill.

Q. How long have you been engaged in that occupation?

A. Forty years.

Q. Do you have your own business?

A. No, sir.

Q. What company do you work with?

A. I have worked all those forty years for the Sterling Lumber Company.

Q. Have you ever been in any litigation?

A. No, sir.

Q. Do you know anybody with any of these railroads?

A. No, sir.

Q. Do you know Mr. Keeshin?

A. I do not, no, sir.

Q. Do you know the plaintiff, Parmelee Corporation, in any way?

A. No, sir.

Q. You have never done business with them?

A. No, sir.

Q. Where is your place of business located?

A. 119th and Halsted Street.

Q. Do you know of any reason at all why you can't
131 give both sides in this case a fair trial?

A. I do not.

Q. Have you ever had occasion to form any opinion as to the anti-trust laws, so-called?

A. No, sir.

ROBERT KULA, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell

Q. The next gentleman in the back row, your name, please?

A. Robert Kula.

Q. What is your business or occupation?

A. An office clerk with the RCA Victor Distributing Corporation.

Q. What is the nature of your business, I mean what you do there?

A. I handle the parts inventory.

Q. Have you ever been involved in any litigation?

A. I don't understand what that means, to be truthful with you.

132 Q. Lawsuits, just like we are in now.

A. No, sir.

Q. Not just like what we are in now, but the same general idea, where somebody sues you or where you sue somebody else.

A. No, sir.

133 Q. How long have you been working for RCA?

A. Approximately five years, sir.

Q. I take it you have had no connection of any kind with any of the railroads involved in this case?

A. No, sir.

Q. Or the Parmelee Company?

A. No, sir.

Q. Or Mr. Keeshin's company?

A. No, sir.

Q. Do you know anybody working for the railroads?

A. Not to my knowledge.

Q. Do you do business with any of the railroads as far as you know?

A. I really don't know, sir.

Q. Is there any reason at all of any kind of character or description which would lead you to believe you couldn't give both sides in this case a fair trial?

A. No, sir.

ELLA J. DELGADO, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. Thomas McConnell.

Q. The lady in the back row, what is your name?

134 A. Ella J. Delgado.

Q. What is your business or occupation?

A. I am employed as secretary and general office worker.

Q. With what company?

A. The Surty Manufacturing Company, Incorporated.

Q. What kind of business do they do?

A. They manufacture safety equipment for industrial machines.

Q. Have you ever been involved in any lawsuits of any kind?

A. No, sir.

Q. Do you know anybody working for these different railroads that I named?

A. No, sir.

Q. Does your company do business with these railroads or do you know?

A. Yes, they use them to transport their material at times.

Q. What would be the nature of that work?

A. Well, just shipping our equipment that we sell.

Q. You use them as a carrier?

A. As a carrier, yes, a common carrier.

135 Q. Do you know of any reason at all why you couldn't give both sides in this case a fair trial?

A. No, sir, I do not.

Q. How long have you worked with this company?

A. Sixteen and a half years.

Q. I take it you never worked for any of the railroads?

A. No, sir.

Q. Or the terminals?

A. No, sir.

Q. With whom does your husband work?

A. Kraft Foods, Incorporated.

Q. What is his position there? Can you tell us that?

A. He works in the production department, various departments.

Q. He is not a salesman?

A. No.

By Mr. McConnell: I will tender the four jurors.

By Mr. Thompson: Mr. Carrera, do you still live at 4437 North Whipple?

By Mr. Carrera: Yes, sir.

By Mr. Thompson: Is this your first experience as a juror in the Federal Court?

136 By Mr. Carrera: Well, I have had two other experiences during this period.

By Mr. Thompson: This is your first panel service?

By Mr. Carrera: Yes, that is true.

By Mr. Thompson: Are you a chemist?

By Mr. Carrera: No, sir, I am not.

By Mr. Thompson: What is your work?

By Mr. Carrera: I work in the office where we do the processing of orders, incoming orders, take telephone orders, and also in the buying of the pharmaceuticals which we sell.

By Mr. Thompson: Is that in the sales department or the records department or what?

By Mr. Carrera: No, that would be in the sales department.

By Mr. Thompson: All right.

Parmelee Transportation Company, which is the plaintiff in this case, is a company of diverse and sundry businesses. Do you have any connection with it in any wise that you know of as a stockholder or otherwise?

By Mr. Carrera: No, sir.

By Mr. Thompson: Do you know Morris Markin, who either directly or indirectly owns most of this company?

By Mr. Carrera: No, sir.

137 By Mr. Thompson: You have no connection with the Yellow Cab Company which is affiliated?

By Mr. Carrera: No.

By Mr. Thompson: Or the Checker Cab Company, which is affiliated?

By Mr. Carrera: No, sir.

By Mr. Thompson: As far as you know, you have no relations with the plaintiff in any wise, directly or indirectly?

By Mr. Carrera: No, sir.

By Mr. Thompson: And you have had no litigation with anybody?

By Mr. Carrera: No, sir.

By Mr. Thompson: With any of these railroads or anybody else?

By Mr. Carrera: No, sir.

By Mr. Thompson: Mr. Bonnema, you still live at 1722 South Sangamon?

By Mr. Bonnema: That is right, yes.

By Mr. Thompson: Without repeating these names, you have no connection as a stockholder or otherwise with any of the Parmelee Transportation Company or any of its affiliates or subsidiaries?

By Mr. Bonnema: No, sir, I have not.

138 By Mr. Thompson: I assume you know nothing about this lawsuit?

By Mr. Bonnema: I do not. Just what I saw in the paper, an item here and there, but I know nothing about it. I know nothing about it, only what I see an item in the paper.

By Mr. Thompson: You saw an item in the paper in the last few days, you mean?

By Mr. Bonnema: Yes, that is right.

By Mr. Thompson: That didn't tell you much about the lawsuit?

By Mr. Bonnema: No.

By Mr. Thompson: It just told you about some procedural matters?

By Mr. Bonnema: Yes.

By Mr. Thompson: Do you remember reading about this case four or five years ago when the difficulty out of which this lawsuit arises took place?

By Mr. Bonnema: No, sir, I do not.

By Mr. Thompson: So you have no notion as to who is right or wrong in this?

By Mr. Bonnema: No.

By Mr. Thompson: The same thing is true with you, Mr. Carrera?

139 By Mr. Carrera: Well, I did read a little something about it in the last few days.

By Mr. Thompson: I know, but that didn't tell you anything about what the controversy is about?

By Mr. Carrera: No.

By Mr. Thompson: It told you about some procedural matters here in court?

By Mr. Carrera: That is right, yes.

By Mr. Thompson: It gave you no notion as to who is right or wrong, did it?

By Mr. Carrera: No.

By Mr. Thompson: Do you remember reading about it, back in 1955, when the acts out of which this litigation arises took place, the transactions?

By Mr. Carrera: No, sir, I do not.

By Mr. Thompson: You have no recollection of that?

By Mr. Carrera: No, sir.

By Mr. Thompson: So far as you know, you have no preconceived notions about how this case ought to be decided, one way or the other, on any issue?

By Mr. Carrera: No.

140 Q. The same is true with you, Mr. Bonnema?

A. Yes, sir.

Q. Have you had jury experience prior to this panel service?

A. Not prior to this time. Well, I could go back to, let me see, thirty or thirty-five years ago, I think, I served in the Circuit Court, but that is so far back.

By Mr. Thompson: Mr. Kula, you are a clerk, you say, in the RCA Victor Distributing Agency?

By Mr. Kula: Yes.

By Mr. Thompson: Where does it have its offices now?

By Mr. Kula: They are located here at 5050 South Kedzie Avenue.

By Mr. Thompson: Do you still live at 4408 South Francisco?

By Mr. Kula: Yes, sir, I do.

By Mr. Thompson: Are you a married man?

By Mr. Kula: Yes, sir.

By Mr. Thompson: I assume, without repeating the names, that you are in no wise acquainted with the Parmelee Transportation Company or any of its affiliates or subsidiaries?

141 By Mr. Kula: No, sir.

By Mr. Thompson: Or with Mr. Markin, its owner, or at least part owner?

By Mr. Kula: No, sir.

By Mr. Thompson: Have you read about this case back in 1955?

By Mr. Kula: No, sir. I might have, but I don't remember whether I did or what it was about.

By Mr. Thompson: It left no impression at all?

By Mr. Kula: No.

By Mr. Thompson: You have no notion whatever as to the merits or lack of merits of this lawsuit?

By Mr. Kula: No, sir.

By Mr. Thompson: Mrs. Delgado, do you still live at 341 North Parkside?

By Mrs. Delgado: Yes, sir.

By Mr. Thompson: I assume you know nothing about this lawsuit?

By Mrs. Delgado: No, sir, I do not.

By Mr. Thompson: Have you had any experience as a juror before this present service?

By Mrs. Delgado: About four years ago in the County Court.

By Mr. Thompson: In the County Court or one
142 of the state courts?

By Mrs. Delgado: In the county.

By Mr. Thompson: Before Judge Kerner, you mean?

By Mrs. Delgado: The Municipal Court.

By Mr. Thompson: Well, there was nothing in that experience which would bother you in this case?

By Mrs. Delgado: No, nothing whatever.

By Mr. Thompson: I assume you may or may not have read about this case, but whatever you read leaves no impression with you as to the merits of the case?

By Mrs. Delgado: No, sir.

By Mr. Meserow: Mr. Carrera, have you or your family or relatives been involved in any litigation with any of the railroads?

By Mr. Carrera: No, sir.

By Mr. Meserow: Or with Yellow Taxi or Checker Taxi or the Continental Air Transport, all affiliates of the Parmelee Company.

By Mr. Carrera: No.

By Mr. Meserow: Mr. Bonnema, have you or members of your family or relatives been involved in any lawsuits with Checker, Yellow, or Continental Air Transport?

By Mr. Bonnema: No, sir.

By Mr. Meserow: Mr. Kula, the same question to you.

143 By Mr. Kula: No, sir.

By Mr. Meserow: Mrs. Delgado?

By Mrs. Delgado: No, sir.

By Mr. Meserow: Thank you.

By Mr. Owens: Mr. Carrera, I represent Mr. Hugh Cross, an individual in this case, who was chairman of the Interstate Commerce Commission. He also is a former Lieutenant Governor of the State of Illinois. I am wondering whether or not the fact that he has been in government offices would result in your being prejudiced in any way against him.

By Mr. Carrera: No.

By Mr. Owens: Do you have any general prejudice against bureaucracies of any type or government offices or people who hold political offices?

By Mr. Carrera: No.

By Mr. Owens: You can give him a fair and impartial trial like all the other individuals?

By Mr. Carrera: I think so.

By Mr. Owens: Now the fact that something may have appeared in the newspapers before indicates that this trial could be written up again. Now you will confine your judgment on this case to the matters which you hear in the jury box.

144 By Mr. Carrera: Yes.

By Mr. Owens: And not the way it will be written up in the newspapers, is that right?

By Mr. Carrera: Yes.

By Mr. Owens: As the Court has previously instructed you, you shouldn't be discussing this with other people, and I believe within that purview is any discussions that come up in the newspapers. You will confine your attention to the evidence and testimony presented in this case?

By Mr. Carrera: Yes.

By Mr. Owens: And you are willing to do that?

By Mr. Carrera: Yes.

By Mr. Owens: If I asked you the same questions, Mr. Bonnema, would you give me the same answers?

By Mr. Bonnema: I would.

By Mr. Owens: And Mr. Kula?

By Mr. Kula: Yes, I would.

By Mr. Owens: And Miss Delgado, the same?

By Miss Delgado: Yes, the same.

By Mr. Thompson: Defendants accept the tender of the four.

By the Court: Swear in the first four jurors.

145 (Whereupon the first four veniremen were sworn to try the issues.)

FOCH P. BECK, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell

Q. Your name is Beck, B-e-c-k?

A. Beck, yes, sir.

Q. What is your business or occupation, Mr. Beck?

A. Driver salesman for Shell Oil Company.

Q. How long have you worked for Shell?

A. Nine years.

Q. Have you ever worked for any transportation company?

A. No, sir.

Q. Freight company?

A. No, sir.

Q. Have you ever worked for a railroad?

A. No, sir.

Q. What is a driver salesman? I should know, but I don't.

A. That is a fancy handle that they put on their
146 tank truck drivers. I drive a tank truck.

Q. Do you also take orders for oil or gasoline?

A. We are not supposed to. We just make the deliveries.

Q. Are you a member of a union?

A. Yes, sir.

Q. What is your union?

A. 782, Teamsters.

Q. Do you know whether or not your union has ever had any trouble with the Parmelee company or —

A. I know nothing of that sort.

Q. (Continuing) — or any of these other defendants in the case?

A. I know nothing of that.

Q. If there was any such trouble that wouldn't make any difference to you in trying the issues in this case?

A. No.

Q. Do you know anybody that works for any of these railroads?

A. Because I am a board member of our church, and our church has some 400 members, I do know several railroaders.

Q. Is there anything in your acquaintanceship or
147 association or being on a board with them that would in any way prejudice you for or against railroads?

A. No, it doesn't. I do not know what their specific jobs are, but I do know they work for railroads only because I am on the board and am supposed to know the members of the church.

Q. You don't know Mr. Keeshin at all?

A. No, sir.

Q. You never met him?

A. No.

Q. Do you know that he is in the transfer business generally, the Keeshin Trucking Company?

A. I have seen Keeshin trucks on the highway. I have seen the name "Keeshin" on them, but that is all I know about it.

Q. You never had any experience with the Keeshin Trucking Company?

A. No.

Q. That would have anything to do with your attitude towards this case?

A. No, sir.

Q. Have you been in any lawsuits, as plaintiff or defendant or any way?

A. I have been in one lawsuit as a defendant. I 148 hit a little three year old boy on 63rd and Kedzie.

Q. Is there anything in that experience which would prejudice you in any way against lawyers or judges or the judicial process?

A. None whatsoever.

Q. Nothing in that that would make it difficult for you to return a fair verdict in this case?

A. Nothing at all. I will listen to the evidence, what the evidence proves, that is my decision.

Q. I take it you have been serving on the jury panel here in the Federal Building. How many cases have you heard?

A. One previous case.

EDWARD J. ANDEL, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. What is your name?

A. Edward Andel, 2904 South 48th Court, Cicero. I work in a brass mill, the Chicago Brass, as a crane operator. I have worked there eleven years.

149 Q. Well, you are pretty good at reading my mind. You have answered three questions that I was going to ask you.

Who else have you worked for, Mr. Andel, prior to the brass mill job?

A. I worked for the Village of Riverside in the maintenance department. I worked one year with Timken Transportation, worked on the dock. I drove a semi for about four months. Then I enlisted in the Marine Corps. That was 1942, that one year, about a year.

Q. Have you ever been in any lawsuits as a plaintiff or defendant?

A. Never.

Q. Have you ever had any contact of any kind with these railroads except as a passenger?

A. No, sir.

Q. As a passenger, have you ever had any trouble with the railroads?

A. No, sir.

Q. Have you ever had any experience of any kind with anti-trust litigation?

A. I never did.

Q. As a witness or in a company in any connection?

A. No, sir, never.

150 Q. Do you know whether your company does business with the railroads?

A. They have box cars pulled in the back, but I very seldom go way back in the mill. They have copper come in there, but I never noticed. I work in the front.

Q. It is nothing you are interested in. You operate a crane, is that it?

A. Yes, I operate a crane on the pickle tank, where I soak the brass in acid for about five minutes, and the crane takes it up, about 1500, 2000 pounds at a time.

Q. Has there been anything in your experience of any kind that would lead you to believe that you couldn't give both these parties or all the parties a fair trial?

A. A fair trial, yes.

151 HARRY HILB, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The gentleman in the back row, your name?

A. Harry A. Hilb.

Q. You worked for a railroad forty years ago?

A. Yes, grabber No. 48.

Q. What would you be doing on that job?

A. As the freight cars would come into the yard, I would grab the numbers.

Q. How long did you work for them?

A. About a year.

Q. Was there anything in that experience — what railroad was it, by the way?

A. The Grand Trunk Railroad.

Q. Is there anything in that experience that would prejudice you for or against the railroad?

A. None.

Q. Have you ever been in any law suits?

A. No, sir.

152 Q. Is there anything in your experience of any kind that would prejudice you for or against railroads or trucking companies or freight haulers, transfer companies, or the parties in this suit?

A. None.

Q. I take it you don't know any of the parties?

A. No.

Q. Or any of the lawyers?
A. No.

EMILIA L. KASNER, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The woman next to you, your name, please?
A. Emilia Kasner.
Q. What is your business or occupation, please?
A. I am a union representative.
Q. Of what union?
A. Actors Equity Association.
Q. How long have you been with Actors Equity?
A. Eight years.
Q. Did you have some previous employment prior
153 to that time?
A. No, I was at school.
Q. Are you married?
A. Yes, I am.
Q. What does your husband do?
A. He is a student.
Q. At what school?
A. The University of Chicago.
Q. Have you ever been in any lawsuits?
A. No.
Q. For or against anybody?
A. No.
Q. You have never been a witness in a case?
A. No.
Q. Was this your first experience on a jury?
A. This is the first panel I am on.

Q. That is what I mean.

A. Yes.

Q. Is there anything in your past experience of any kind that would prejudice you against any of the parties to this case or would in your opinion make it difficult for you to render a fair verdict here between these parties?

A. I think not, but my experience is limited.

54 By Mr. McConnell: All right. I tender the next four jurors, your Honor.

By Mr. Thompson: Mr. Beck, you still live out at Harvey?

By Mr. Beck: Yes, sir.

By Mr. Thompson: Mr. Andel, you live out at Cicero?

By Mr. Andel: Yes, sir.

By Mr. Thompson: You live at 6210 South Maplewood, Mr. Hilb?

Mr. Hilb: Right.

By Mr. Thompson: I don't think I got your present occupation?

By Mr. Hilb: I am machinist for the City of Chicago.

By Mr. Thompson: What department?

By Mr. Hilb: The Bureau of Equipment and Service.

By Mr. Thompson: Mrs. Kasner, you still live at 500 East 33rd Street?

By Mrs. Kasner: Correct.

By Mr. Thompson: What school is your husband in out at the University of Chicago?

By Mrs. Kasner: Chemistry.

By Mr. Thompson: Where is the office of the Actors Equity Association?

By Mrs. Kasner: 612 North Michigan.

155 By Mr. Thompson: In Chicago?

By Mrs. Kasner: That is right.

By Mr. Thompson: As has been told you by Mr. McConnell, this is an action brought under the so-called Anti-Trust Laws of the United States, in other words, laws which are designed to protect against unreasonable monopolies, and so on. Do you have any preconceived notions as to the good or evil of anti-trust laws? Do you have any preconceived notions as to what ought to be decided in a case of this character?

By Mrs. Kasner: Are you addressing me?

By Mr. Thompson: I am addressing Mr. Beck presently.

By Mr. Beck: No.

By Mr. Thompson: Or you, Mr. Andel?

By Mr. Andel: No.

By Mr. Thompson: Or Mr. Hilb?

By Mr. Hilb: No.

By Mr. Thompson: Or Mrs. Kasner?

By Mrs. Kasner: No.

By Mr. Thompson: As far as you know, all of you, starting out at this stage of the case, you are entirely free of any opinion one way or the other about the merits of the litigation, is that right?

156 I think all of you said this is your first experience, this panel in the Federal Court.

Mr. Hilb, your department doesn't have anything to do with this transportation here in Chicago, does it?

By Mr. Hilb: No, I work on heavy equipment.

By Mr. Thompson: Heavy equipment?

By Mr. Hilb: Roller, cranes, maintaining and starting presses.

By Mr. Thompson: That is in the heavy equipment department of the City of Chicago?

By Mr. Hilb: Right.

By Mr. Thompson: How long have you worked at that?

By Mr. Hilb: Twenty-two years.

By Mr. Thompson: Civil Service, I suppose?

By Mr. Hilb: Right.

By Mr. Thompson: Defendants excuse Mrs. Kasner.

157 By the Court: Call another juror.

By the Marshal: Mr. Zoost.

JOHN J. KISLEY, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thompson

Q. You are Mr. Kisley?

A. Yes, sir.

Q. Do you still live at 4839 West Van Buren?

A. Yes, sir.

Q. What is your business?

A. I am an auditor for Yardley's of London, Incorporated, 445 Lake Shore Drive.

Q. How long have you worked for Yardley's?

A. Twelve years.

Q. I suppose you have read something about this litigation? Do you have any recollection of reading anything about the situation back in 1955 or thereabouts when the controversy occurred?

A. No, sir.

Q. You have no notion now as to who is right or wrong in this lawsuit, do you? Do you have any feeling one way or the other about prosecutions under the anti-trust laws?

158 A. No.

Q. You don't know any of the parties to this litigation, do you?

A. No.

Q. Do you know anything about the Parmelee Transportation Company, which is a corporation organized in 1929, I think it was?

A. No, sir.

Q. Nor the Continental Transport Company, which handles the passengers to the airports; you have no connection with them?

A. No, sir.

Q. Or the Yellow Cab Company here in town?

A. No, sir.

Q. Or the Checker Cab Company?

A. No, sir.

Q. You don't know Morris Markin, one of the principal owners, if not the owner of Parmelee Transportation?

A. No, sir.

Q. As far as you know, you have no connection in any way, as a stockholder or otherwise?

A. No, sir.

Q. This stock is on the public market and you 159 don't have any of that?

A. No, sir.

Q. And you have no connection with it at all?

A. No, sir.

Q. You have had no experience with any of the defendants, Mr. Keeshin, or Mr. Cross, or any of these railroads which would affect your verdict in any way?

A. No, sir.

Q. You have never had any participation in litigation one way or the other?

A. No, sir.

By Mr. Thompson: We will tender the four.

By the Court: All the defendants?

By Mr. Tone: Yes.

By Mr. Meserow: Yes.

By Mr. Owens: Yes, your Honor.

By the Court: All right.

By Mr. Thomas McConnell: What is the nature of your work? What do you do?

By Mr. Kisley: I fill orders. As orders come in, I fill them.

By Mr. McConnell: Do you know whether or not you have any business with the defendant railroads, I mean your company?

By Mr. Kisley: I don't think so. We get all of our stock through trailers.

By Mr. McConnell: I will accept the tender.

By the Court: Swear in the next four jurors.

(The panel was duly sworn to try the issues.)

By the Court: Please join the other four.

BEATRICE BERLIN, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The lady in the front row, your name is Berlin?

A. Yes, Mrs. Beatrice Berlin.

Q. And you are a housewife?

A. Right.

Q. What is your husband's business or occupation?

A. He is a retired grocer.

Q. Was he a retail grocer or a wholesale grocer?

A. Retail.

Q. Have you ever had any lawsuits of any kind?

161 A. No, sir.

Q. Have you testified as a witness in any lawsuits?

A. No, sir.

Q. And you have been in this jury panel for the first time; you have never been a juror before?

A. No.

Q. Have you already heard a case or maybe two?

A. In this court?

Q. Yes, in the Federal building?

A. Just now, four cases I was on.

Q. Four cases?

A. Yes.

Q. Is there anything in that experience which would prejudice you in any way against the judicial process or lawyers or judges?

A. No, sir.

Q. Has there been anything in your experience with any of these railroads that would prejudice you for or against railroads?

A. No, sir.

Q. Do you have any ideas about the anti-trust laws which would prejudice you for or against their application?

A. No, sir.

162 Q. Do you know of anything in your experience which would make it difficult for you to give either side or anyone here a fair trial?

A. No, sir.

DOLORES J. FRAHM, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The lady in the front row, is your name Frahm?

A. Dolores J. Frahm, that is right.

Q. Is it Miss Frahm?

A. Yes.

163 Q. What is your business or occupation?

A. Assistant manager of girls' wear, Sears, Roebuck & Company, on State Street.

Q. Of what wear?

A. Girls' wear.

Q. How long have you been employed by Sears?

A. A year and a half. Prior to that time I was with Mandel Brothers for two and a half years in an assistant buyer's position.

Q. Has your entire business experience been in the women's clothing?

A. No. For three and a half years I was in real estate. It has always been in selling.

Q. Selling — you are a sales lady?

A. Yes.

Q. I take it, then, you have never had any experience with the railroads, business experience?

A. None whatsoever.

Q. Except maybe to ride trains. Have you ever had any experience of railroads of any kind or transportation companies which would make it difficult for you to decide the case fairly?

A. No, sir.

Q. Is there anything in your experience of any
164 kind that would make it difficult for you to decide a case of this kind as far as you know about it?

A. Nothing that I know of.

Q. Have you ever been in any lawsuits of any kind?

A. No, sir.

SOPHIE WASSERMAN, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell

Q. The lady on the back seat, your name?

A. Sophie Wasserman.

Q. What is your business or occupation?

A. Housewife.

Q. What is your husband's business?

A. Retail liquor store.

Q. Where is his store?

A. 45th and Prairie.

Q. Have you ever been involved in any lawsuits of any kind?

A. No, sir.

Q. Have you ever been a juror before?

165 A. Yes, in this court.

Q. In this particular panel?

A. No.

Q. In some previous year?

A. No, sir.

Q. Just this—

A. Just this month.

Q. Just this period of service?

A. Yes.

Q. You mean you have heard other cases?

A. Yes.

Q. Is there anything in that experience that would prejudice you against this sort of a lawsuit?

A. No, sir.

Q. Is there anything in your experience of any kind that would make it difficult for you to decide this case fairly?

A. It wouldn't, but I know Mr. Keeshin's daughter-in-law. She went to school together with my son, and then we were neighbors.

By the Court: That was who?

By Mr. Thompson: Keeshin's daughter-in-law and she were neighbors.

166 By the Court: She may be excused by the Court.

By the Marshal: Benner.

MYRON E. ZOOST, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell

Q. Are you Mr. Zoost?

A. That is right.

Q. And your address?

A. 422 Midway Drive, Island Lake, Illinois.

Q. What is your business or occupation?

A. I drive a tank wagon for the Sinclair Refining Company.

Q. Is that the same sort of a job this other man had of delivering oil and gasoline to filling stations?

A. Service stations and homes.

Q. Wherever you want oil and gas, you deliver it?

A. You buy it, and we will bring it to you.

Q. Are you a member of the same union?

A. Yes, sir.

Q. Do you know Mr. Keeshin's company, the Keeshin Trucking Company?

167 A. I have heard of it.

Q. Have you ever worked for it or any of its connections of any kind?

A. No, sir.

Q. I take it you know none of the parties to this case or any of the lawyers?

A. No, sir.

Q. Have you ever been in any lawsuits?

A. No, sir.

Q. Is there anything in your experience of any kind that would make it difficult for you to give us a fair trial, and when I say "us," I mean everybody.

A. Nothing that I can think of.

168 FRED J. BENNER, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. Thomas McConnell

Q. The next gentleman in the back row, your name?

A. Fred Benner.

Q. What is your business or occupation?

A. Right now I just sold a grocery business. I am in retirement for a while.

Q. You are in retirement now?

A. That is right.

Q. What was your last gainful employment?

A. I have not worked for anybody. I was always on my own.

Q. Your own business?

A. Yes; grocery was last, and before that I had trucks running for Royal Crown Ne-Hi Company.

Q. What kind of a grocer were you, retail or wholesale?

A. Retail.

Q. Do you know any of the parties here in this lawsuit?

A. None whatsoever.

169 Q. Do you have any friends who work for the railroads?

A. No.

Q. Or the trucking companies involved?

A. No.

Q. Do you know of anything in your experience of any kind that would make it difficult for you to give us all a fair trial?

A. No.

By Mr. McConnell: I will accept the panel, your Honor.

By Mr. Meserow: Mrs. Berlin, do you or your husband own any stock or have any interest in the Parmelee Transportation Company, the Yellow Cab, Checker Cab or Continental Air Transport?

By Mrs. Berlin: I know he has some stock. I don't know which company it is in. I have heard him mention some of them.

By Mr. Meserow: Any of these companies I have mentioned?

By Mrs. Berlin: I heard him say something about the Yellow or the Checker or something. There is something that he has.

By Mr. Meserow: He has some stock in those companies?

170 By Mrs. Berlin: Yes.

By Mr. Meserow: Was he employed by a grocery chain or did he own his own grocery?

By Mrs. Berlin: His own.

By Mr. Meserow: Before he retired?

By Mrs. Berlin: Yes.

By Mr. Meserow: When did he retire?

By Mrs. Berlin: Thirteen years ago.

By Mr. Meserow: Mr. Benner, your grocery was individually owned?

By Mr. Benner: Yes.

By Mr. Meserow: And it was outside of Chicago?

By Mr. Benner: That is right.

By Mr. Meserow: Do you have any stock or do any members of your family in any of these companies I have mentioned?

By Mr. Benner: None whatsoever.

By Mr. Meserow: Have you ever been involved in any lawsuits involving these companies?

By Mr. Benner: No, sir.

By Mr. Meserow: How about you, Miss Frahm; are you married?

By Miss Frahm: No.

By Mr. Meserow: Have you ever been involved in
171 any of these lawsuits with any of these companies I have mentioned?

By Miss Frahm: No, sir.

By Mr. Thompson: Mrs. Berlin, do you know whether you have any stock in the Yellow Cab, or is that just one of the names that has been bandied about?

By Mrs. Berlin: We have—I don't know just which one it is, but we have one of the companies, that I know. It is either Yellow or Checker.

Mr. Thompson: That is connected with this plaintiff transportation company. *Do you think that that would* influence you in any wise in the trial of this lawsuit?

By Mrs. Berlin: I don't think so.

By Mr. Thompson: I don't either.

By Mr. Mesgrow: Mrs. Berlin may be excused.

By the Marshal: Ceja.

SALVADOR I. CEJA, a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. Meserow.

172 Q. How do you pronounce that?

A. Ceja.

Q. Where do you live, Mr. Ceja?

A. 2116 South Ridgeway Avenue.

Q. What is your occupation?

A. I am a tax deputy in the Tax Redemption Bureau for the County Clerk, Eddie Barrett.

173 Q. How long have you held that position?

A. I just come back in August. I left the Sheriff last year, but I worked formerly two and a half years for Judge Otto Kerner as a minute clerk in his court room.

Q. Do you know any of the parties in this case?

A. No, I don't.

Q. Have you ever been involved in any lawsuits?

A. Well, I have, as a defendant and a plaintiff.

Q. What kind of cases?

A. Accident, automobile.

Q. By reason of those lawsuits, have you developed any prejudices against plaintiffs or defendants or judges or lawyers?

A. No, because I was on both sides, plaintiff and defendant.

Q. What is the nature of your duty in the County Clerk's office?

A. Well, right now we make searches. We write the tax bills that come in that have already been paid, and we follow through, and we make up the orders after they are made out.

Q. Is that in Chicago or the country towns?

A. Right here for the County Clerk, the County Building.

174 Q. Is your job civil service?

A. No, it isn't.

Q. In other words, it is politically sponsored?

A. Yes; I am a precinct captain.

Q. What ward?

A. 22nd Ward.

Q. Who is the Committeeman there?

A. Otto Janousek, the biggest man on the City Council.

Q. He is in size.

Are you or any members of your family stockholders, or do you have any interest in the companies I mentioned before to the other jurors?

A. None at all.

Q. Have you any preconceived prejudices or ideas about anti-trust litigation?

A. None at all whatsoever, just what I read about four or five years ago when I think Parmelee, either Parmelee or this other concern, had the rights, or something like that, and the other one took over, and I think it came to the City Council, or something like that. Isn't that so?

By the Court: You don't have to answer it.

By Mr. Meserow: Mr. Ceja, you may be excused.

By the Marshal: Mackie, Jr.

175 GEORGE R. MACKIE, JR., a member of the panel of veniremen, having been first duly sworn, was examined as to his qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell.

Q. Mr. Mackie, where do you live?

A. 11133 South Union, Chicago 28.

Q. Your business or occupation.

A. International Harvester Company, production records, office clerk, seventeen years.

Q. What would production records be?

A. The figures that are received in our plant from all the other plants in the chain, and then we coordinate those with the IBM department. I am like a production coordinator.

Q. Having to do primarily with records of your production in the plant?

A. That is right. They are orders for the IBM system.

Q. You have been with them seventeen years?

A. Yes, sir.

Q. Have you ever worked for a transportation company of any kind?

176 A. No, I never have.

Q. Or any railroads?

A. No. I have relatives with the New York Central and the B&O and the Chicago and Alton, but they are not close relatives.

Q. How close?

A. Well, I have a cousin—one cousin works for the Chicago and Alton and another works for the B&O, and my wife's niece works for the New York Central.

Q. Well, do you think because they work for those companies that that would interfere with your giving anybody a fair trial here?

177 A. It doesn't mean anything to me that they work for those railroads. I have been involved with the B&O. It didn't go to litigation, but I had a suit against them. It was settled out of court.

That was in 1945 or 1946; I am not sure what year. I was hurt on the B&O outside of Gary, and they settled out of court.

Q. Well, were you happy about your settlement?

A. I did all right.

Q. Do you feel under obligations to them because you got such a good settlement? Is there anything in that that would bother you from giving any of us a fair trial?

A. No; I still ride the train. I have no feelings for or against them. I still ride trains.

Q. It wouldn't make any difference in your judgment here what you do to us?

A. No, sir. I rode all the trains during the war, the Pennsylvania, New York Central, B&O, North Shore, every train there was, I guess. I was in the Service for two years, and I had to ride trains to get back and forth.

Q. I know you had to ride trains, and we have no objection to your riding all the trains you want, just

178 so there is nothing in that experience that would prejudice you in any way.

A. No, sir.

Q. Do you know of anything in your whole experience, your time on this earth that would prejudice you one way or another in this lawsuit?

A. I don't know too much about it, to tell you the truth.

Q. I understand that, because I don't know too much about it either, but what you know and what we have told you, the little we have been allowed to tell you here about this lawsuit; can you tell us whether or not there is anything that would prejudice you?

A. No, sir, there is nothing.

By Mr. McConnell: I will accept the tender, your Honor.

By Mr. Keating: Mr. Mackie, are you related to a David Mackie?

By Mr. Mackie: No; I don't have any relatives.

By Mr. Thompson: They are accepted.

By the Court: Swear them in.

By Mr. McConnell: We have two alternates.

By the Court: All right.

179 By the Marshal: Marie Anderson.

By the Court: Swear in these four.

(The third panel was sworn to try the issues.)

By the Court: Please join the other eight.

By the Marshal: Bessie Bayless.

MARIE ANDERSON, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein and testified as follows:

Examination by Mr. McConnell.

Q. The lady in the front row?

A. Marie Anderson.

Q. Let's start with Marie Anderson. Are you Miss Anderson or Mrs. Anderson?

A. Mrs. Anderson.

Q. Your business or occupation?

A. Housewife.

Q. What is your husband's business or occupation?

A. He is a machinist in maintenance for the Western Electric Company.

Q. Prior to your marriage or during your marriage have you ever worked for any transportation companies?

180 A. No, sir.

Q. Have you ever worked for any companies in any way connected with these defendants or the plaintiff in this lawsuit?

A. I worked for the Hotpoint Company. I imagine they used the railroads.

Q. When did you work for Hotpoint?

A. I worked for them fifteen years. I quit five years ago.

Q. Did you work for them during your entire business experience?

A. Yes, sir.

181 Q. In what way did you work for them? What was your business? What was your occupation?

A. A group leader in the pre-packing department.

Q. Have you ever been involved in any lawsuits, either as a plaintiff or as a defendant?

A. No, sir.

Q. Have you ever been a witness in any case?

A. No, sir.

Q. Have you ever been on jury duty before you appeared here on this panel in the Federal Building?

A. We sat in on three cases this month; that is all.

Q. Is there anything in that experience that would prejudice you against lawyers or judges or lawsuits?

A. No, sir.

Q. Is there anything in your experience that would make it difficult for you to give any of us here a fair trial?

A. No, sir.

BESSIE BAYLESS, a member of the panel of veniremen, having been first duly sworn, was examined as to her qualifications to serve as a juror herein, and testified as follows:

Examination by Mr. McConnell.

Q. Mrs. Bayless, are you a housewife?

182 A. I am a housewife.

Q. Have you ever had any business experience? Have you worked for anybody?

A. Well, I was a nurse.

Q. You didn't work for any railroad companies?

A. No.

Q. Have you ever been involved in any lawsuits of any kind?

A. No.

Q. What does your husband do?

A. My husband is dead. I am a widow.

Q. Is there anything in your experience of any kind that would make it difficult for you to give the parties here a fair trial?

A. No, sir.

By Mr. McConnell: I will accept the two alternates.

By Mr. Meserow: Mrs. Bayless, have you or the members of your family owned or do you own any stock in the Parmelee Transportation Company, Checker, Yellow, or Continental Air Transport?

By Mrs. Bayless: No, sir.

By Mr. Meserow: All right.

By Mr. Thompson: We accept them.

183 By the Court: All right; bring out the other jurors.

All of you other jurors, thank you for coming in here. You may retire and have your lunch and then report back to your jury room.

All the jurors rise and be sworn again, please.

(The jury of twelve and the alternates were thereupon sworn to try the issues.)

By the Court: Be seated, please.

Now that you have been accepted and sworn in, you will report every morning until you are excused in this court room into the jury room and you will stay in there until we call you for service in this case.

As you probably know, in the mornings we have other matters which take about a half hour sometimes or a little over, and you may not be called in until 10:30, but I expect you to be here at 10:00 o'clock sharp in the jury room.

Again, I want to impress upon you and insist that you do not discuss this case with anyone, not even among yourselves, and let no one talk to you about the case anywhere, at home, here or en route, and if anybody talks to you, I want you to report them to me, and I want you to keep your minds free, clear and open until your final deliberations.

184 You may be excused and have your lunch and come back at 2:00 o'clock. Make it 2:15 in the jury room.

(Whereupon a recess was taken in the hearing of the above-entitled cause to 2:15 o'clock p.m. of the same day, Monday, April 25, 1960.)

185 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Monday, April 25, 1960
2:15 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;
Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;
Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;
Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;
186 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

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187 By the Clerk: Case on trial.
By the Court: Bring out the jury.

(Whereupon in the presence and hearing of the jury, the following proceedings were had:)

By the Court: Mr. McConnell.

And Thereupon Mr. Thomas McConnell Addressed The Court And Jury In Opening Statement On Behalf Of The Plaintiff:

By Mr. McConnell: May it please the Court, ladies and gentlemen of the jury: At this stage of the proceedings, it is my province to make what we term and what you have heard in the other cases which you have heard on this panel, an opening statement of the case.

I have been practicing law for more years than I want to admit, and this is the first time in my experience that I have come before a jury at a loss as to what to say in an opening statement.

My quandary arises because of rulings that have been made by Judge Miner prior to the trial, limiting the issue. I have no desire to get into trouble with the ruling judge, at the same time I have the problem of what to present to you people as to the nature of our case.

188 I am also faced by a further quandary in that a prior judge, who ruled on motions on the pleadings, has stated that our conspiracy proofs were competent on the issue of public injury. If I can understand Judge Miner's ruling, that ruling has been overruled, and I am limited to an issue which I really don't understand myself.

As I stated to you people this morning, I represent the plaintiff in the case, and I brought into this court a case which was brought under Sections 1 and 2 of the Sherman Act and the concomitant section of the Clayton Act.

189 The first of those sections deals with a conspiracy to restrain trade, and the second deals with a monopoly of trade in commerce.

We have taken depositions, and we have worked hard and arduously in the preparation of this case, and those issues apparently are beyond the pale.

I am not going to burden you people with my difficulties in the law of this case. That is something we have been arguing, and I have very definite opinions on

it as to how the case should be presented, and my only quandry, and it is a real quandry, is how to make a record here which the court above can see that certain issues were involved.

By Mr. Thompson: If the Court please, this is an opening statement. An opening statement is supposed to tell the jury what you expect to prove, and this has nothing to do with that.

By Mr. McConnell: In opening statement, the province of an opening statement is, as Judge Thompson has suggested.

By the Court: I will sustain the objection. There has been a full opinion rendered by this Court to counsel before the selection of the jury, and counsel knows 190 the precise limitations in those rulings.

By Mr. McConnell: Well, your Honor, with all due deference to what I may know, I want the record to show exactly what the issue is so that we can have a ruling on it up above.

This case was brought, as I say, under these two sections of the anti-trust laws, and the defendants were outlined to you this morning.

I don't know that any good purpose is served by going over them again, but this is an opening statement which can't be supplemented by any other statement that I have made, so I guess that I have to do that.

As to the parties, the Parmelee corporation is a Delaware corporation which was engaged in commerce in the carrying of passengers and baggage at different terminals in the City of Chicago, back and forth, in a western direction or eastern direction or maybe some other direction.

It involves the Pennsylvania Station, sometimes known as the Union Station, the North Western Station, the

Santa Fe Station, the New York Central Station, the LaSalle Street Station over here, the Illinois Central Station, and the Baltimore & Ohio Station.

191 Those are the main terminals, and those are the main stations, and the Parmelee company, starting out with Frank Parmelee way back in 1853, started in that business, making it possible for passengers without going out and hiring other means of transportation, simply on the basis of a coupon issued by the railroads, to get from one terminal to another and continue their interstate travel, with as much freedom from interruption as possible here in view of the unique situation prevalent here in Chicago of having all these terminals and having these interrupted portions of the voyage.

The proofs will show that. I don't know as there is any dispute in the proofs on that.

The proofs will show, and I don't think there is any dispute about this proof, and certainly I don't think there is an issue raised on the pleadings on it, that the Parmelee Company had this business or its successors or predecesors had this business for 102 years.

192 The name is a common name. Anybody that ever traveled railroads I am sure has heard it mentioned or has known of it, and has probably used its services. It was there many, many years.

That business was carried on by limousines which picked up the passengers and their baggage and carried them from one terminal to another. There was also a pickup service which anybody arriving in Chicago could call Parmelee or tell Parmelee they wanted their baggage taken from the terminal and delivered at their home or vice versa, the other way at their home, picked up at their home and delivered to the station. That was part of the service.

The railroads were working under a situation where I think the coupon which Parmelee was charging was for the passenger for that trip, station to station, was $1.20. That was the amount at least that was offered by Parmelee to do the job, and that service oevr the years was considered satisfactory.

At least the witnesses testified that the services were perfectly satisfactory, and Parmelee had had many many years of experience in handling this kind of business, knew how it should be done and they were willing to do it for this price.

193 Then there was some discussion, as the proofs will show, among various officials of railroads who had to do with this sort of business, passenger people, as to whether or not if the matter was opened up for bidding from outsiders, maybe the railroads would get a little better rate.

The railroads were paying the charge. Whether or not it was included in the overall tariffs, I don't know. I know it was not part of the Interstate Commerce Commission's task to rule on these rates. The Interstate Commerce Commission ruled that it had no jurisdiction over this particular form of transportation, although the proofs will show that this was an integral part of interstate commerce; that it was commerce between two states. It was the commerce of carrying passengers and their baggage originating outside of the State of Illinois, passing through the State of Illinois, and continuing as one continuous voyage beyond the State of Illinois in interstate commerce.

Of course, one of the elements of an anti-trust case is that plaintiff, such as I represent, has to show that commerce is involved and directly interfered with by something in violation of the anti-trust laws.

As I say, I didn't give you a date, but along in
194 1954 sometime, the railroads decided that they would investigate the question of whether or not services could be obtained from some other carrier or a transportation company or trucker on a cheaper basis or where the thing would be more attractive possibly than Parmelee was offering.

195 I believe that some eight companies were contacted and asked to submit bids. I think only two of them actually got down to a serious attempt to bid on the business. One of the companies was Keeshin's company—not his company. It was Keeshin himself. Keeshin has been in the transportation business, as the proofs will show, and he was contacted and asked to make make some sort of a proposal.

Then the railroads had a committee of six. The chairman of that committee was a man by the name of Padrick. He was asked to contact our company, the Parmelee Company, and get a proposal from them, and he did so contact us and we did give him a proposal.

There were three eastern railroads represented on that committee. There was the New York Central, the Pennsylvania Railroad Company, and the Baltimore and Ohio Railroad. There were three western railroads represented on that committee. One was the North Western Railway, one was the Illinois Central Railway, and the other one was the Santa Fe.

Now, each of those railroads appointed representatives to sit on that committee to determine whether or not any other proposal than Parmelee's should be ac-
196 cepted or whether or not anything should be done in the way of changing from one carrier to another for that particular segment of commerce.

Along in March, Parmelee submitted a bid. I believe their bid was $1.20. I don't have the exact figure in mind.

As near as I can figure out, and as the proofs will show, I think, the bids were submitted and as far as the costs were concerned, there was not enough difference to measure.

The proofs will show that there was some comment made and some direction made to the people who sat on this committee that unless the coupon could be gotten down to $1.00 or $1.10, or something in that neighborhood, that there wasn't really any real reason to change from a carrier who had been doing this business and was thoroughly familiar with it to someone new who had never been in the business, and the proofs will show that Mr. Keeshin had never been in any such business.

The proofs will show that he proposed an absolutely new company which hadn't even been organized yet. He was going to organize it and buy some new equipment. There was some talk in the committee about air conditioning of station wagons by Keeshin on one hand, and we were using limousines on the other.

197 Finally the Parmelee bid ended up where Parmelee was going to supply $500,000 of new equipment over a period of time without any particular designation of it. Keeshin was going to use station wagons and some Volkswagons, and the details of those contracts worked out to something that was about the difference of tweedle-dee and tweedle-dum.

Anyway, on March 15, the proofs would show that there was very clear evidence that members of the committee were satisfied that the Parmelee bid was good enough so there was no reason to make any change. The Parmelee company was practically assured that the business was theirs.

In the intervening time things occurred, which I apparently am not free to mention, and one of the parties who is a defendant in this case is Hugh W. Cross. He was mentioned here this morning by the other side.

He was a member of the Interstate Commerce Commission. Later, in July of 1955, he became chairman of the Interstate Commerce Commission. He was from Illinois. He had been Lieutenant Governor of Illinois, and through the intercession of Mr. Cross with the railroad presidents, the proofs would show with three specific presidents, Mr. Simpson—

198 By Mr. Meserow: I object to that testimony as being immaterial to the issue on trial here now. These statements are not relative to public economic injury.

By Mr. McConnell: These statements are contained in the complaint and the issues that are here for trial.

By Mr. Meserow: There are a lot of statements—

By Mr. McConnell: They are not evidence. They are merely my statement of what I would attempt to prove.

By the Court: I will let him go on a bit. I will see how much of it is admissible for the purpose of the limited issue.

By Mr. McConnell: The proofs would show that Mr. Cross, who was then a member of the Commission, went and saw at least three railroad presidents. He saw Howard Simpson of the Baltimore and Ohio. He saw Paul Feucht, who was then president of the Chicago North Western Railway. He is not retired, I believe. And he saw Mr. Wayne Johnston, who was president of the Illinois Central Railroad.

He made special trips to see those gentlemen and ask them to give this business to Keeshin. He told at least one of these gentlemen, Mr. Johnston, that if Keeshin got the contract that he would have a position with the

new company to be formed by Mr. Keeshin that 199 would take over this business.

The other railroad presidents, according to their depositions which would be offered here, knew about that. They had heard it rumored. They don't say that they were actually told that by Mr. Cross, but we would attempt to prove on this issue of public convenience and public injury that the railroad presidents, all of them, six at least had representatives on this committee, were actually dealing and deciding the question of who was going to obtain this business, were in effect importuned by Mr. Cross to change from the plaintiff in this case to the Keeshin company; and that within a few days after that the formerly favorable reception which had been had by the members of the committee and the recommendations which the proof will show they had actually made to their officers who were going to ostensibly decide it on what the committee members recommended, that in disregard of those recommendations and in the face of the recommendations, they were all directed to change their recommendations to vote in favor of Keeshin as against Parmelee.

200 Now that recommendation was sent back to the terminal railroads, the twenty-one railroads which had business in the terminals, and was accepted. I believe that Parmelee was notified on June 13, 1955, or thereabouts, of the unfavorable action of the committee, and Parmelee then was working under an arrangement whereby it would maintain and do the work until September 15 of 1955, I believe, at which time Parmelee was out of the business and the Keeshin Company took over.

That was the end and termination of the Parmelee Company in the transfer business. There wasn't any other such business. It is a unique business. There is only one of them, so far as I know, that does that sort of thing.

The railroads entered into a five-year contract with Mr. Keeshin's company, which precluded anybody else from bidding or seeking that sort of employment during the five-year period of the contract.

Now, the issue of damages is not before us. I don't think it is necessary for me to discuss that. It is just how we as a private litigant were damaged under the anti-trust laws.

201 Of course, one of the conditions of bringing the lawsuit at all by a civil litigant or private litigant is that the private litigant must show damage to himself as distinguished from just general over-all damage to the public.

If we were permitted to get to that issue, we would offer proof of the value of the services, profits that were made, to sustain the claim of damages, which was some six or seven million dollars, in the complaint.

I have discussed this with his Honor, Judge Miner, and made statements about it outside the presence of the jury, and I do not propose to offer to this jury specific evidence of money damage to the public. I don't know whether that would include difference in rates, difference in quality of service, whatever that specific thing would involve. I have taken the position before the Judge that I do not believe that is an issue in an anti-trust case, and we are making a record here which can be reviewed in a court of review, and I do not propose to offer evidence of difference in rates, difference in quality of service.

The offer of evidence which I shall make involves
202 the proof of the conspiracy and the monopoly issues, which I am advised will have to be made outside the presence of the jury.

I know of nothing further that I can add, your Honor, to what I have stated.

By the Court: That is correct. That is my ruling.

Thereupon Mr. Meserow Addressed The Court And Jury In Opening Statement On Behalf Of Defendants John L. Keeshin And Railroad Transfer Service, Inc.

By Mr. Meserow: If the Court please, and ladies and gentlemen of the jury: I represent two of the defendants, John L. Keeshin and Railroad Transfer Service.

My colleagues, Judge Thompson and Mr. Tone, represent the railroads and railroad presidents. Mr. Keating represents the New York Central, and Mr. Owens, at the other side of the table, represents Hugh Cross. You will undoubtedly hear from them when I complete my statement.

The Railroad Transfer Service is a corporation that was formed in July of 1955. The stock is owned entirely by Mr. Keeshin. So when I refer to either Railroad
203 Transfer or Keeshin, it is the same people.

We propose to prove, and there is only one question involved here, according to Judge Miner's rulings, has there been public economic injury by reason of the railroads awarding the contract to Keeshin which was previously held by Parmelee?

It is incumbent upon the plaintiff, Mr. McConnell and his client, to prove that there has been public economic injury. Keep that in mind, and I am sure the judge will so instruct you at the termination of this case. You must find from the evidence that there has been public economic injury suffered by reason of this change of contract.
204 Now let me amplify briefly what Mr. McConnell tried to explain to you. What is the essential factor here?

For example, if Mr. Andel or Mr. Carrera or Mr. Beck should get on a train in San Francisco, Los Angeles or—

By Mr. McConnell: I object to this. This is an argument.

By the Court: Objection sustained.

By Mr. Meserow: I am trying to explain the coupon service.

If they purchase a railroad ticket to go through from one destination to another, which goes through Chicago, the railroad sells them their railroad ticket, and attached to the ticket is a coupon.

When Parmelee had the transfer contract, they had the Parmelee ticket. Since 1955, it was a Keeshin railroad transfer ticket.

The public does not pay any more or any less whether they use that ticket or they don't. We are prepared to show that. So that is included in your ticket.

Now, when you get to your destination in Chicago, and you want to transfer to another station, supposing you come in on the Santa Fe at the Darborn Station 205 and you want to go to the La Salle Street Station to get on a New York Central train, there waiting is the railroad transfer vehicle where you hand in the coupon and you are taken to the other station without any further charge.

We are prepared to show that in 1955, when the railroads were negotiating, and in 1954, negotiating for this contract, the rate that the railroads paid Parmelee was $1.22 for each coupon that Parmelee turned in to the railroad.

Now the railroads had a declining passenger traffic. They had been losing money for years, and they became conscious of their expenses. They wanted to cut down the expenses as much as possible, and they scouted around, and they had been for several years, to see if they could cut the cost of this Parmelee coupon service.

They met with Mr. Morris Markin, as we will show, and he told them, "Well, the way costs are going up, it may go to $1.50 per coupon." The railroads got fearful of this, so they solicited bids—not from seven, but about fifteen different companies, such companies as Gray Line, Willett, Landon Cartage, Keeshin, and half a dozen others.

206 Only three companies presented any bid. Landon on baggage alone; Willett on both; and Mr. Keeshin. There were only three bids that came in.

Before Mr. Keeshin interposed his bid, he had his staff of about six people that made a complete survey of all this inter-station transfer service. He studied carefully the cost factors, the rates, the timing, the number of passengers, the trains going in and out, when they arrived, and they sat down and studied it, he and his staff.

We are prepared to show that Mr. Keeshin has been in the transportation business for forty-four years. He placed at the head of his company Colonel Alex Baxter, who was a transportation expert in this field.

207 He served the Army for many years as head of the Fifth Army Corps in Transportation. He was one of the men that was involved, who headed this Railroad Transfer Company.

When Mr. Keeshin completed this survey, he made a bid to the railroads of $1.20. That is two cents less than Mr. Markin or Parmelee had been getting from the railroads.

In addition, he promised them this, and this is important, because it does affect the public.

He promised them this; that he would replace his equipment, all of it, within thirty months with new equipment. In addition he promised them limousines that were heated in the winter and air conditioned in the summer, and the reason that he provided for air conditioning was that

when passengers come into Chicago on an air conditioned train, and Chicago can be hot, they get into one of these vehicles, and it is an air conditioned vehicle.

In addition, these limousines would have automatic power brakes and power steering, all the latest devices, and a chief factor that interested the railroads was that Mr. Keeshin guaranteed a firm bid in the beginning for three years, because he had a commitment from a
208 labor union in which they agreed to give him a three-year labor contract for the drivers and the employees of his new company, so that he was able to go to the railroad committee and say, "Yes, I can give you a firm bid for three years."

It had an acceleration clause that when the cost of living went up, then the rate went up a penny for every five-cent increase in the cost of living.

Now, let's compare Parmelee. Parmelee in the beginning, $1.22; they were being paid by the railroads, no air conditioning, no automatic devices on the cars, and another big factor that Keeshin had was that he was putting in radio-dispatched cars.

Parmelee absolutely refused to have air conditioning and radio-dispatched automobiles. What is the significance of radio-dispatched? On the face of it, it doesn't sound like much, but here is what happened when Parmelee operated from station to station.

A man would leave in his car or would be stationed at the LaSalle Street Station, let's say, and a train would come in at the Dearborn Station, and there was an extra big crowd of people that wanted to go to another station.

The only way that you could get a Parmelee limousine
209 from that station to another station, and if he was enroute from LaSalle Street, say, to the IC Station at Twelfth Street, there is no way of getting ahold of

him until he got to Twelfth Street, and when he got to Twelfth Street then somebody would say, "There is a big crowd over at the Dearborn Station. You had better go over there."

The result was that the passengers would have to wait at the stations, whether it was hot or cold not making any difference. They had to wait for the Parmelee cars to come over.

We are prepared to show tha some of these Parmelee cars were ancient relics, and, in the vernacular of the motor industry, they call them clunkers.

With a radio dispatch, if a man of Keeshin's organization is enroute, and there suddenly becomes a big crowd at the Dearborn Station and he is over somewhere else, the dispatcher from the central headquarters of Keeshin's organization calls him and says, "Get your car over to the Dearborn Station. There is a big crowd there," and he scoots right over, and he picks up the crowd.

210 As a result, we are prepared to show there wasn't this awaiting that had been going on with Parmelee, and the railroads were impressed by this.

Now, there is the question of baggage, which is another function of the Railroad Transfer Service. Parmelee made two pickups and deliveries of baggage per day from one station to others in Chicago.

Keeshin offered to make four deliveries so there would be no delay in baggage, and in addition he had to pick up anybody who wanted to have their baggage or trunk picked up, and he would go out anywhere and pick it up in the vicinity of Chicago.

The railroads were impressed with the four deliveries of baggage. Mr. Keeshin suggested the use of trailers, tractors and trailers, and you gentlemen of the jury who drive trucks, I am sure you are familiar with that.

The trailers are left at the station until they are filled up with baggage, and the tractor comes and takes them to the other stations where they go. It makes for easier facility of handling baggage.

All these factors were offered by Mr. Keeshin, which impressed the railroads. They felt this man knows his business, that he is progressive, and Parmelee,
211 through Mr. Morris Markin, its president, didn't offer any of these things.

Yet, several months later when Mr. Markin of Parmelee found out what Mr. Keeshin's bid was, he reduced his to $1.20.

Another factor I forgot to mention to you, when Mr. Parmelee, or rather, Mr. Markin of Parmelee made his original bid with the railroads, he said that because the railroad passenger rate was decreasing, he said, "I want in my bid to have a one cent increase per coupon for every one per cent decrease in passengers carried."

After he found out, as we will show, what Mr. Keeshin's bid was, he took that, what we call the acceleration clause out, but had the acceleration clause been in there, ladies and gentlemen of the jury, today the railroads would be paying about $1.65 per coupon, if that acceleration clause had been in, because the passenger service has completely —not completely, but it has reduced tremendously.

These are some of the factors that we contend and we are ready to prove are what influenced the railroads in giving the contract to Mr. Keeshin's organization and discontinuing it with Parmelee.

212 Counsel for the plaintiff here will attempt to show you that because the railroads gave the contract to Mr. Keeshin's company, that Parmelee had to go out of business competely. We are prepared to show that for almost one year after October 1, 1955, when Keeshin's

company started operations, that for almost one year Parmelee continued to have its cars at every railroad station in the City of Chicago, and the Chicago terminal area.

Their cars were parked either alongside of or in place of Keeshin's cars, and there were times when they had the prior spot and the better spots to attract the passengers coming off the railroads.

They had their agents soliciting passengers. This way, if you are going to that station, they took cash fares. They took coupons, they took anything, and that went on for almost one year, and there is nothing to stop them today from putting their cars at the station just like they put their Yellow cabs, their Checker cabs, and affiliated companies at those stations to take people for a cash fare to another station if they want to go.

They are not out of business, as we will show.

213 As the negotiations were, the railroad committee went on, and Keeshin was able to get a five-year commitment from his union, and Mr. Markin had no contract with the union. The men that worked as drivers for Morris Markin's Parmelee Transportation Company, the plaintiff here, were threatening to go on strike because at first, and we are ready to show that, at first Mr. Markin offered them no increase in pay, which they demanded, and secondly, he finally came up to three cents an hour increase, and the drivers said to him, "If you don't give us a substantial increase, then we are going on strike, and we are going to picket the railroad stations."

The railroad companies did not want to have a strike and picketing of railroad stations and a cessation of this continuous traffic, and they were impressed with the fact that Keeshin had a firm commitment for five years with a labor union.

Mr. Keeshin's contract with the union provided no split shift. In other words, Parmelee's men had a split shift. They would get down at seven in the morning, and they would work for four hours and then they would be off for five hours, and they had to come back and work another four hours.

214 Keeshin provided eight hours of regular work pay, whether they worked one hour or two hours. He paid them an eight-hour day, and other benefits, health and welfare, which Parmelee did not offer its men.

We are prepared to show that most of the men drivers that worked for Parmelee finally came over and are now driving for Mr. Keeshin's Railroad Transfer Service.

These are the factors which show that the railroads wanted Keeshin in place of Parmelee, and we have a lot of testimony from railroad witnesses who will testify to you of the superior service offered by the Railroad Transfer Service over what Parmelee Transfer Company used to be.

I believe that will substantiate our part. We are ready to prove, ladies and gentlemen of the jury, that there has been no public economic injury. Remember that the public does not pay for this ticket, that if anybody stands any increase, it is the railroads and not the public.

They got better service and better equipment, and we have a lot of testimony on that.

Thank you very much.

215 By the Court: Judge Thompson.

By Mr. Owens: If you don't mind, your Honor, I will make my statement first.

And Thereupon Mr. Owens Addressed The Court And Jury In Opening Statement On Behalf Of Defendant Hugh W. Cross, As Follows:

By Mr. Owens: If you don't mind, your Honor, I will make my statement first.

Ladies and gentlemen of the jury, my client in this case is caught like a piece of wheat between millstones being ground.

Mr. Hugh Cross is the third man in the second set of seats back there. Mr. Cross was the chairman of the Interstate Commerce Commission. He has no interest in who got this contract for transportation, but inquiries were made of him, because he is in constant contact with people in the field of transportation, railroads, freight forwarders, people in all the fields of transportation, and he did have conversations with people about this transportation between stations in Chicago.

216 It was not a matter that came within the jurisdiction of the Interstate Commerce Commission, but he was interested in it because of the economic advantage it would be for the railroads to have good service.

It is true that inquiry was made of him as to the status of these negotiations, and he had made inquiry also, and the word that he received with regard to negotiations was passed on.

There was no gain for him out of this and no gain will be shown. He is merely an innocent party who is necessary to the complaint that the plaintiffs have made in this case, and that is the reason he is brought in here.

He is like a keystone in an arch as far as their complaint is concerned, but I am sure when all the testimony is presented you will see he is just an incidental character in this little drama that they have written up to be portrayed in this court.

Thank you.

By the Court: The next defendant.

And Thereupon Mr. Thompson Addressed The Court And Jury In Opening Statement On Behalf Of Defendant Railroads As Follows:

217 By Mr. Thompson: May it please the Court and ladies and gentlemen of the jury: The issue which is being submitted to you, as the Court has already told you, is one of whether or not the public has suffered injury by reason of the negotiations that led to and the awarding of the contract for transportation of passengers here in Chicago.

Before we go any further I want to correct the idea that the plaintiff in this case has been rendering this service for 102 years in Chicago. The plaintiff wasn't even born until 1929, when it came into being.

It was organized down east and started buying up some companies as its subsidiaries, and among them was this company that was doing the transportation work here in Chicago, which had a different name.

It wasn't this company at all, and it bought this business, and since 1929 has been running the business or had been until the contract with Keeshin company was made in 1955.

The story is a long one and a complicated one, but I don't think you need too much of the details now to understand what this is all about, and to see that there is no conspiracy here that they have talked about and to see that there is no loss to the public.

218 In fact, all of the change is a gain to the public.

Without going back too far, I shall drop back only to 1946, which was eight years, or rather, nine years preceding the change of the service, and I will hastily cover the period.

1946, as you know, was the first year after the termination of the so-called World War II—about the 25th world war, but anyway we call it World War II, and in 1946 things were getting back to normal.

The excess of railroad transportation caused by movement of troops and what-have-you was passed on, and

we were back to normal movement of people in the regular ways of life.

The Parmelee Transportation Company, which was, in fact, Mr. Markin, had no contract with its labor except from year to year. Its contract ran from July 1 to June 30th, year after year.

In 1946, as had occurred before, but this time in 1946 when May came around there was no arrangement or agreement with this labor. There was a representation to the railroads that there might be a strike and a cessation of this service.

This service is a service that had been provided by
219 the railroads all these years, because, as Mr. McConnell said, this community is unique in that all railroads carrying passengers terminate in Chicago that come here at all.

220 There is no railroad going through Chicago. They have these six principal railroad stations for the steam lines, the so-called steam. They are not steam any more, but the diesel lines, I guess we will call them now, and then they have the North Shore and the South Shore, those stations of the small interurban services.

The six stations we are concerned with primarily are these principal railroad stations, the North Western over hereby itself on Madison and Canal, and then south of that on Jackson and Canal is the Union Station, which services the Pennsylvania and the Milwaukee and the GM&O, which is the old Chicago and Alton Railroad, and some others, the CB&Q, the Burlington Railroad, and then you come across the Grand Central which is serviced by the B&O, Baltimore and Ohio, and the Pere Marquette and the Sou Line, and so on.

Then over at the LaSalle Street Station where you have the Rock Island system and the New York Central and the Nickel Plate and some other smaller lines, and

then you go to the Dearborn Street Station which services the Santa Fe and the C&EI and the Wabash and a few others, and then on over to the Illinois Central,
221 which services the Illinois Central Lines, which run south in the main and northwest, and also it used to serve the Michigan Central Lines, which is a part of the New York Central system, but I think they are not now served there.

Whether they are or not, there are six stations, and if somebody is coming in from Minneapolis on the North Western Railroad, or the CB&Q Railroad or the Milwaukee Railroad, any one of the three, and wants to go south on the Illinois Central or east on the New York Central, then they have to get from that station over to the other station.

The railroads furnish this as a matter of competition and accommodation to their passengers. It started out, of course, in the old horse and buggy days when old Mr. Parmelee hauled the people around in a horse hack and hauled the baggage around in a horse dray, and then later on, at the end of the century, when automobiles came into use, then another bunch of people bought old man Parmelee out, and they started to motorize the service, and it was motorized during the period from 1905 or 1906 on through to 1929.

It finally became completely motorized and it was
222 in that situation that this Parmelee Transportation Company came into being and bought the business.

The railroads contracted with somebody to render this service. They didn't have the equipment or the men or didn't desire to get in this limited business here. They contracted with somebody to render the service. This somebody was these different companies throughout the years.

When you get down to 1929 and the Parmelee Transportation Company, the plaintiff in this case comes into being, then of course it began to monopolize all street transportation in Chicago by buying the old Parmelee Company, which rendered this service between stations, by buying the Yellow Cab Company, by buying the Checker Manufacturing—the Checker Cab Company, and by establishing the Continental Transfer Company, which hauled the people out to the airports, so that if you traveled at all, you traveled on one of Mr. Markin's companies under the banner of the Parmelee Transportation Company.

All that will be proven, if we get to it.

As I say, there was no assurance in 1946 that this Parmelee Transportation Company would be able to
223 transport passengers between stations, because they didn't have any contract with their labor, and so it went on through the summer with a day-to-day uncertainty as to whether there would be any transportation service or not, and the railroads had to live in that atmosphere of uncertainty because of this labor dispute.
224 Finally, Parmelee made a contract with these people, and they went on for the balance of that year until June 30, 1947.

In 1947 the same thing happened all over again. No contract, and that is no contract by the time June 30th rolled around. No contract in July, and finally, in the late summer, they make a deal with labor again, and they have a contract, and so they go on for the next year around to June 30, 1948.

Mr. Markin then came to the railroad and said in 1947, late 1947 or early 1948, that he didn't have—that he wasn't making enough money out of this business, that he had been charging 85 cents for this coupon, but the

85 cents was not adequate, and he demanded that there be an increase in the payment of this coupon.

This coupon was a part of your interstate ticket. Here is the ticket from Denver, Colorado, to Chicago, and then in between is a little coupon about an inch wide which was this local transportation, and then on down the rest of it was a ticket on to Baltimore, if that is where you were going, so that when you got to Chicago you just tore off this ticket and handed it to the Parmelee Transportation people, and they hauled you to whatever station you were going to.

225 I you had baggage checked, there was a punch in the little ticket which says "Baggage checked" on it like any other ticket you have, railroad ticket, and your baggage was moved from one station to the other station, so that you and your hand baggage went in the local transportation vehicle, and your checked baggage went across in a truck.

In 1948 when the ticket was 85 cents, that was paid by the receiving line. In other words, if you came in on the Burlington from Denver to the Union Station and you wanted to go out on the Illinois Central south, you had to get over to the 12th Street Station, and the Illinois Central picked up the ticket and paid for it, paid the Parmelee people for it, so that the receiving line always picked up and paid this ticket, thereby having the difference in the cost to these different railroads depending on how many passengers were delivered to them by the other railroads, by Parmelee.

226 In 1948, Parmelee represented to the railroads that he was losing money, and he made this demand for an increase of pay. In order to demonstrate to the railroads that he couldn't make any money, he set up a tabulation showing that the price he was then getting for his ticket for so many passengers, that is 1,400,000 passengers, let

us say, just to use a figure, 85 cents for 1,400,000 would produce him so much money and his expenses were so much, and he would have so much profit. But he showed that if this passenger business keeps dropping off so he got only 1,375,000 this next year, I will make less money, and if I get only 1,350,000, I will make less, and he finally gets down to the bottom of the page, and he says that the coupon will have to be $1.50 if the passenger number gets down to 1,120,000, or whatever the figure was.

So that he shows a gradual increase that these railroads are going to have to pay, from the 85 cents then being collected down to $1.50 if the passenger business fell off that much.

Well, this was quite alarming to the railroads because they were already losing money on their passenger service, and they knew this thing was going to keep 227 going. But they argued back and forth, and finally they agreed to increase the charge to a dollar per coupon with the assurance from the Parmelee Transportation Company that the service would be improved, and that there would be some stability about this thing and this labor business would be disposed of.

Well, 1949 rolls around. We are paying them a dollar now, but when June 30 comes, they have no contract with labor, and we lived through another summer without knowing whether we were going to have a truck on the street or a limousine on the street the next day.

So finally, along at the end of the summer, they get a deal with their people, and we go on for another year until June 30, 1950. On June 30, 1950, we have the same merry-go-round. No deal with our labor people; no knowing whether there is going to be service the next week or not.

This time it happened, and we had a strike for six months. The railroad passengers putting up with it, we

hauling them back and forth by taxicabs, and what have you, from July to December. That is 1950. We had a real strike that time.

In 1951 we go through the same merry-go-round
228 again. But in 1951, Parmelee, or Markin, rather, represents to the railroads that he thinks he may be able to make a deal with his labor so that he can have a contract that will go until June 30, 1952, but he is going to have to have some more money to do it. So he finally gets $1.05 for his coupon and makes his labor arrangements.

229 In 1953, he comes back to them again and says, "We are not making any money, I can't keep on going this way." In December he sits down with them and says, "We have got to have $1.25 for this coupon, and we just can't get along without $1.25."

Then in January, 1954, he writes them a letter and lays down the demands that he has got to have $1.25 and if he doesn't get it, he is going to quit the business, and so on.

So the railroads were getting a little fed up by this time, and then is when they appoint this committee in January, 1954 to investigate the situation.

In 1954 we get this demand in writing in January, and the railroads are fed up by this time. They see this thing is going right on out through the roof if something isn't done, so they appoint this committee, one railroad from each of the principal stations.

Of course, North Western, there is only one railroad there so the North Western was on the committee. The largest railroad at the Union is the Pennsylvania Railroad, so it was on the committee. The largest one at the LaSalle Street is the New York Central, so far as the coupons are concerned, at least, so it is on the com-
230 mittee. The B&O represented the Grand Central Station and the Santa Fe the Dearborn Street Station,

and the Illinois Central its own station, the 12th Street Station.

Now, those six railroads were on the committee. Obviously railroads can't sit on a committee. It has got to be some person employed by the railroads. So the passenger agents of the different railroads were assigned to this committee. The passenger representative of the North Western sat on the committee and so on around.

Now, Mr. McConnell was in error when he said that Mr. Padrick was the chairman of the committee. Mr. Padrick wasn't even on the committee. Mr. Bone of the New York Central was the chairman of the committee. He was the man who was the local representative and the local passenger traffic manager in Chicago for the New York Central.

That committee of six railroads was appointed. There were more than six passenger agents on the committee, but six railroads. That committee had this demand before it of the Parmelee people, of Markin, that he had to have $1.25 a coupon to move these passengers across the town.

231 That dispute with Markin continued for four months, trying to get to some agreement. He was demanding that there be $1.25 retroactive to January 1st. That demand was made, as I said, in December orally and then put in writing in January.

They horsed back and forth for two or three months trying to get together on some kind of a compromise; the railroads offering this, Parmelee rejecting it, and Parmelee demanding this. Finally, the middle of April, 1954, they finally compromised and paid Parmelee $1.12½ from January 1 to April 1. In other words, they gave him 7½ cents increase for those coupons that had already been picked up and paid for, and asked him to submit a

separate bill for that. They then paid him $1.20 per coupon from April 1 to July 1, 1954, and the deal was that after July 1, the railroads were to pay him an increase of one cent per coupon for each three cents of increased labor costs, three cents an hour increased labor costs. That is one cent per coupon for each three cents an hour increased labor costs.

232 Well, June 30 comes around, and no contract with labor. We can't tell what the coupon is going to be after July 1 because he hadn't made a deal with his labor people, and he didn't make it in July. He didn't even get it done in August. Along in September, finally, he makes a deal with them and it costs him five and a half cents, I think, or six cents an hour.

Well, that means we have got two cents added to our coupon retroactive to July 1st, so we pay $1.22 per coupon from July 1, 1954, on. That contract was to expire June 30, 1955.

Well, our committee, which had been wrestling with Parmelee to get this thing settled for the half year in 1954, hadn't had time to do anything such on getting new bids in, but they did meet a couple or three times. They met on the first of February, and at their first meeting in 1954 they sat down and made a list of all of the companies in the community that they thought were big enough to do this job.

You will understand, of course, that this had been a monopoly all these years, and there was only one company that was doing it. There was no competition. So anybody

233 that went into the business would have to go out and buy all the station wagons, all these trucks, and hire and organize a new crew. Obviously, it wasn't the easiest thing in the world to get somebody to make a bid on this deal.

So the committee put down everybody that they thought might be interested. They got a list of fifteen or twenty institutions that were big enough to do the job if they were interested. Then after they got this list made, they assigned among themselves, these six fellows on the committee, the job of contacting these folks, one taking a couple of them and another taking a couple, and so on.

They had been appointed by what is called the Chicago Terminal Lines. Now the Chicago Terminal Lines is not an organization at all. It is simply representatives of each of these twenty-one railroads that have terminal facilities in Chicago, sending representatives to any meeting where they talk about common problems.

One of the common problems, obviously, was this transfer contract, so these terminal lines did meet, and it is of that group that Mr. Padrick acted as chairman, informally, by selection of the representatives of the various railroads.

Mr. Padrick was the acting chairman of the Chicago Terminal Lines, which is just a group of representatives.

Now the Chicago Terminal Lines appointed this committee and it, of course, had to make a report to the Chicago Terminal Lines. After they got organized and free, they began to contact these prospective bidders, and among the people they went to was Mr. John L. Keeshin.

Mr. Keeshin had no intimation that he was going to be asked to bid on this job. Mr. Keeshin is engaged and has been for a good many years in the interstate trucking business and in the matter of consolidating less-than-carload lots into carload lots, and so on and so forth, rendering a freight service to not only the railroads but to the public, and so on. He was plenty big enough to handle the job, but had no passenger equipment.

So when they came to him, Mr. Bone, who was chairman of the committee, went over to Mr. Keeshin's office, after making an appointment with him, in March, and asked Mr. Keeshin if he would be interested. Well, of course, being new to him, he asked him something about what it was and he said, "Well, I will take a look at it and make some kind of a survey and decide whether
235 I will be interested, and let you know."

That was the kind of answer they got from all of these twelve or fifteen people they went to.

236 So along about June, nobody had ever called them back. They didn't have any bid yet. So they decided to get out a statement of the job to be done, a sort of specifications of what we need, a proposition or proposal to these bidders. They typed up a two or three page analysis of the job, telling them how many passenger stations there were, what the distance was between the passenger stations, how many trains arrive at the different stations, and how many depart from the different stations, and how many passengers are to be transferred, and how much baggage this amounts to, and so on.

So they had this specification, and then they were asked by the committee, each one of the people, to contact again those they had contacted before, and give them this specification and see if they couldn't get some bids out of them. They told them that the committee itself would have a meeting and discuss this with him.

So the committee did set up at the Union League Club at a room specified two days for hearing each of these persons that showed any interest at all. One company would be invited to come in at 10:00 o'clock in the morning and be given one hour, and another company at
237 11:00, and so on.

Among the companies that came in to talk with the committee to get further information was Mr. Kee-

shin, Jack Keeshin, and he brought along with him one of his men that was engaged in the freight business with him. They met on September 16th with the committee.

Well, all that occurred at those committee meetings on September 15 and 16, 1954 were simply discussions, an orientation, and outlining to these prospective bidders of how big the job was, what they would have to do, what they would have to have by way of equipment to render the service, and so on and so forth.

But each man that showed any interest at all was urged to file a bid, a written formal bid by the 1st of November, I think it was. Well, November comes around and nobody has filed any bid. So the committee gets busy again and calls those people that had shown any interest at all at the September 15th and 16th meetings, and said, "What about this? We want a bid."

Well, Keeshin told them at the September 16 meeting that he was going to organize a crew of men, as Mr. Meserow has told you, to make a survey. He asked the committee to meet with him so he might talk with them about the results of his survey and get some more information from the committee.

They met at the tail end of November, the 19th or 23rd, as I recall it, and went over this in rather some detail, Mr. Keeshin telling the committee what he had found out at the various stations as to the loading platform facilities, the adequacy or inadequacy of the physical properties, the character of equipment he thought would be necessary or would be best to serve the railroads.

He told these people that the railroads had improved tremendously their rail service to their passengers, air conditioned cars, nice appointments, and so on and so forth. He said, "You bring them here into town, you dump them off this fancy train from the west, and you put them

in an old hack to haul them across town, and then you dump them into another fancy train going south or east. You ought to have transfer service here in town that is somewhat comparable at least to the high class service you give them on the rails."

He also said that "Your transfer of baggage is antiquated; that you have got this baggage piled up on the platforms and you are putting it in straight-body trucks and trying to haul it across town, whereas you ought to have small trailers." He said, "I propose to set at each
239 station three 20-foot trailers so that they may be loaded as fast as the baggage comes off of a train. You put it right into the trailer, designated for a particular station, and you put into another trailer designated for another station. Then I propose to have adequate number of tractors to hook onto these trailers and get them over to the stations as fast as the transfer needs to be made."

240 He proposed that he would have radio dispatching for not only the passenger vehicles that haul the passengers from one station to another, but radio dispatching for the tractors that would move the baggage trailer loads.

He pointed out to them that by radio dispatching he would be in constant communication so that if there is congestion at one station, he could move his equipment over there immediately, whereas if there was no service needed at another station, he could move it out.

He also pointed out that he would air condition his passenger vehicles that were moving the passengers. They would be heated in the wintertime and air conditioned cooled in the summer, and so on.

Another thing that had been a bone of contention and dispute with the Parmelee people from year to year was when they were demanding these increases in cost for the

coupons, the railroads were saying, "Well, what evidence have you got that you are losing money, that you can't make any money on this coupon? May we look at your books?"

"No, no, you can't look at our books," and so on. 241 So they wouldn't let them look at the books. Parmelee furnished whatever figures he chose to furnish, and that was the end of that.

Mr. Keeshin said to the railroads, "I not only make my bargain with you, but you can look at the books every day you want to, and I will furnish you an audited statement every six months."

The railroads said, "We don't need one every six months." So he agreed to furnish them one once a year. That is a statement of the certified public accountant's auditing of his books to show whether or not he is making money or losing it.

Mr. Keeshin—you remember now that Parmelee was then getting $1.22 for each of these coupons, and he still had the running contract that he was to get one cent increase in coupons for three cents increase an hour in wages.

Mr. Keeshin bid for the first year of the service $1.20 per coupon, in addition to all this improved service. Of course, his equipment would be a hundred percent new equipment; no secondhand equipment in it.

He promised them that every thirty months, every two and a half years, he would put in brand new equip- 242 ment again, make a complete substitution of equipment as far as passenger vehicles were concerned, and as far as the trucks, as often as they needed it.

Now that is the bid that he filed in writing. I mean, that is the bid he made orally in November, and he said, "I will put this all in writing now and have it to you by the 9th of December."

Well, he didn't get it to them by the 9th of December, but by the 15th he did, and on the fifteenth of December he gave them a written bid in which he said, "It will be $1.20 for the first year and one-cent increase for each five cents I have to increase the wages of my drivers." He said that is a firm bid. There will be no frills about it. It doesn't make any difference if passenger service falls off, that is my responsibility. That will be the bid, $1.20 for the first year, one cent for each five cents of wage increase thereafter for the five-year period.

By the way, he was asking for a five-year contract, of course, because he was going to have to spend a half million dollars to equip this business. He wanted to have a chance to write it off, as he wore it out.

Now that is the status of December 15, 1954. One
243 bid to do this whole job, and that is Mr. Keeshin's.

Nobody else. There was a bid by Landon that they would haul the baggage, but that was only half the job, or a fourth of it. One bid, and that was by Keeshin.

The railroad committee then called Mr. Markin of the Parmelee Transportation Company to a conference, and they said to him, "Now, we are in earnest about this thing. If you want to render this service, we want a proposition of what you are going to charge us after June 30, 1955, and what kind of service we are going to get.

244 That was communicated to him at the end of December. Of course, there was no intimation that they had a bid from Keeshin. They just told him if he wanted the job, he had better get in a bid.

The reason Mr. Keeshin—I don't know what the reason was, but anyway, Mr. Keeshin had committed himself, as I told you, to a flat figure for the first year only. In January, early in the year 1955, there was a contract negotiation among the transfer people and the Teamsters Union

in this community, and there was a three year contract made which covered, of course, the Teamsters' relations with their employers in this community for the next three years. That contract, notice was published of the fact that this had taken place.

Then Mr. Bone, the chairman of the committee, wrote, on January 14, 1955, to Mr. Keeshin and said, "We have been reading about this new deal or new contract that has been made with the Teamsters, and does that make any difference in your bid?"

Well, Mr. Keshin wrote back—and the dates are significant—on January 15, Mr. Keeshin wrote back and he said, "Yes, it makes this difference: Now that I know what the labor charge is going to be for the next three 245 years, I reconfirm the $1.20 for the first year, and I tell you now that the price will be $1.22 for the second year, $1.23 for the third year, the three years of the contract with labor, and it will be only one cent for each five cents of increase in labor after the third year."

That is on January 15. So here is Keeshin on December 15, in writing, making his bid. On January 15, in writing, confirming his bid, and adding more details. There was no bid from anybody else yet.

The committee now reports to the terminal lines. It reports to the terminal lines it has the bid from Keeshin and it has no bid from anybody else; that it is still trying to get a bid from Willett Company, which is a big operator and could do the job if they wanted to, and it was also seeking a bid from somebody else. They had given up on all the rest of them.

Now, on March 15, after some jogging by Mr. Padrick, Markin files a bid—March 15, three months after Keeshin's first bid, two months after his supplemental bid in January.

Markin's bid is $1.20. We will show that he had said that he couldn't do this business at all for less than $1.25 in 1954, and that it was probably going up to $1.50,
246 but he discovers by March 15 of 1955 that he can do it for $1.20 for the first year.

He said, "I want one cent increase for each three cents increase I have to pay my laborers each year, and I want one cent increase per coupon for each one per cent of drop off in the number of passengers that I haul." In other words, he wanted two escalator clauses in his contract. He put them in his bid.

The committee met with Mr. Markin on the 17th of March, 1955, and they spent hours with him, arguing back and forth about his bid. They told him that they were not going to stand for this guarantee of volume of business by paying him one cent per coupon increase for each one per cent drop off in volume of business; that that was out. He didn't take it out notwithstanding they told him that they wouldn't consider it.

That is where the thing stood until April 6th, when Mr. Keeshin wrote a second letter—really a third one, if you count the bid in December a letter—wrote a third communication to the committee in which he said, "I have been studying my bids presented on December 15 and amplified on January 15, and I want to amplify it further by making more specific some of the proposals that I have with respect to this service."
247 As far as the price is concerned, it was still identically the same, but he did make some amplification of his proposals, and that is all that it amounted to really.

He said, that "My bid of $1.20 for the first year, $1.22 for the second, and $1.23 for the third are firm bids, and there will be no variation whatever happens to the volume

of business."

248 Now on May 19, 1955, the committee calls the meeting again, and there are only two live bids by this time, Keeshin's bid and the Markin bid. They set a meeting in the forenoon to talk to Mr. Keeshin and give him a going over about his bid to be sure that everybody understood each other, and in the afternoon they had a full afternoon with Mr. Markin and his group to go over his bid in detail.

That took the whole day, and after that was all over, then the next day, Mr. Markin had a brilliant thought, and he called Mr. Bone, the chairman of the committee, by telephone from Kalamazoo, Michigan, and he said, "I want to amend my bid."

Well, Bone said, "This is a fine time to be amending it. We have been at this thing now for a year and a half, and you were told yesterday that we wanted your last and final bid."

Well, he said, "I want to make some changes in it." Bone said, "Well, I don't know whether the committee will pay any attention to it or not, but I will take the changes and I will pass it on to them." He was chairman of the committee.

So Markin, for the first time, discovered that he could do this for $1.20 for the first year, $1.22 for the
249 second year, $1.23 for the third year, and then he adds $1.24 for the fourth year, and $1.25 for the fifth year.

So that here are two men bidding for this job on a five-year contract. The elements to be considered, of course, are the elements of quality of service and cost of service and also trustworthiness or continuation of service.

Keeshin in the meantime has this three-year contract with labor and assurances of Mr. Fenner of the union that he was doing business with that they would have the

same kind of peaceful relations that they had had in his freight line of business.

Markin had no contract with his labor at all, not even for that year which ended on June 30, 1955, and certainly not for any of the successive years. The railroads were to face again this threat of discontinuance of the business.

June 3rd, the Committee meets, and June 3rd the committee votes, and they vote to award the contract to Mr. Keeshin. On June 13 the Terminal Lines met and the Terminal Lines adopted the committee report.

Now that, I think, shows very decidedly that the public interest was served. In other words, it was improved
250 by these negotiations which resulted in the awarding of the contract to the Keeshin Company and not that it was damaged, which is the issue presented to you.
251 There were communications between various parties respecting this contract, but that has nothing to do with whether the public injury occurred or not in this particular period, but I do want to correct one thing, that I think the evidence will show that Mr. McConnell was in error when he said that these railroad presidents, who made the final decision, as he said, in these different, for these different six railroads, had knowledge of how the other fellow was going to vote, and so on.

The truth is that Mr. Bone of the New York Central had unqualified authority here in Chicago to make the decision himself and did not have to go and did not go to Mr. Perlman who was the president of the New York Central in New York.

He did communicate with the vice-president of the New York Central, assistant vice-president, Mr. Baird, that he had made up his mind to vote for Keeshin, and Mr. Baird communicated to Mr. Nickerson, the vice-presi-

dent for traffic, and Mr. Nickerson O.K.'d what Mr. Bone had already decided to do and said that was O.K., so Bone's judgment to vote for Keeshin was Bone's judgment to vote for Keeshin, confirmed to be sure by his
252 superior, Mr. Nickerson, vice-president for traffic generally.

As far as the Pennsylvania is concerned, Mr. Holt here in Chicago was also commissioned to use his own judgment and to make the best deals he could. He consulted with Mr. Comer, the general passenger traffic manager down in Philadelphia about it, but Commer only O.K.'d what Holt decided to do anyway, so no president of the Pennsylvania had anything to do with this.

Going on down the sea coast over there, Mr. Simpson of the Baltimore and Ohio Railroad had commissioned Mr. Whittington, his general passenger traffic manager, to make the decision, and Mr. Simpson at no time gave Mr. Whittington any instructions as to how to vote.

Mr. Whittington made up his own mind as to how to vote, and he voted for Mr. Keeshin, and at no time ever had any doubt as to who he was going to vote for after he heard the two men, as far as his testimony showed.

Coming this way you get to the Illinois Central, and the Illinois Central's decision was made by the passenger agents, Mr. Hearne and Mr. Smart, and they communicated with Mr. Trovillion, the vice-president for
253 traffic, and he said, "Whatever you have decided to do is O.K. by me, and you go ahead and vote in the best interests of the Illinois Central."

Mr. Wayne Johnston, a friend and acquaintance of Mr. Hugh Cross, and they graduated, both of them, from Illinois University down at Champaign, or Urbana, and Cross was in the legislature and the Speaker of the House in Illinois, and then he was Lieutenant Governor for eight years, and then he went to Washington as a Com-

merce Commissioner, and during all of that time Wayne Johnston had known him, and they had been friends, and so they did talk about these different things, but Wayne Johnston's testimony is he never suggested to his people how they should vote on the transfer contract, and that the passenger department decided it.

254 Mr. Gurley at no time discussed, outside of the railroad, this matter of the transfer contract with anybody, but he did communicate with his folks down the line in the passenger department about this transfer thing, and he found out that Mr. Sloan, the assistant passenger agent who had attended these meetings had thought they ought to stay with Parmelee because there wasn't enough difference in the two bids to justify the change, but Mr. Gurley decided that that wasn't the way to look at it, that it was through Keeshin's bidding that they got the price down to where it was or it would have gone right on out through the ceiling, and he decided that it was in the interests of the railroad to vote for Keeshin and so ordered Mr. Sloan, and Mr. Sloan did it.

The only president of any of the six railroads who issued an order how to vote was Mr. Gurley, and there was no doubt about how he felt they ought to vote, nor was there any doubt about the order he issued.

Then you go on over to the North Western, and Mr. Feucht was contacted by Mr. Cross, and they had a telephone conversation, but Mr. Feucht at no time told how anybody should vote. He called in Mr. Brennan, the general passenger agent over there, and talked to

255 Brennan about it.

After Brennan sized up the situation and reviewed the facts, he informed Feucht he thought they ought to vote for Keeshin, and Feucht said, "You vote the way you think would be to the best interests of the North Western," and that is the way that vote was taken.

That is the story in a nutshell. The public interests have been greatly served by this change and by the stability that has been established with no threat of a strike every year and with reduced costs of the service and with an improvement of the service.

There is no syllable of testimony that can be produced, I think, that shows any injury to the public, any public injury or any kind or character.

Thank you.

By the Court: I will give the jurors a ten-minute recess.

By Mr. Keating: Your Honor, I would like about one minute.

By the Court: All right; I am sorry.

And Thereupon Mr. Keating Addressed The Court And Jury In Opening Statement On Behalf Of Defendant, The New York Central Railroad Company, As Follows:

256 By Mr. Keating: Ladies and gentlemen, and your Honor, I represent the New York Central Railroad Company. There are six railroad defendants in this case, and the only one I represent is the New York Central. No one else represents the New York Central but myself.

257 Therefore, as to what Mr. Bone's authority is, I will get to that in a moment.

I think we have cleared up one thing here, and that is the outgoing railroad is the one who pays the transfer company, be it Markin or be it Keeshin, the $1.20 or the $1.25, whatever the rate happens to be.

There is no secret in this case or anywhere else but that the New York Central and the Pennsylvania roads are competitive, that they compete geographically principally from Chicago to New York.

If a passenger comes into Chicago from the west on the Burlington at the Union Station and only walks a few feet and gets on the Pennsylvania. He has no need to transfer.

Therefore, it is to the advantage of the New York Central to have this transfer service so the passenger gets off the Burlington at the Union Station and then can transfer over free of charge to him, to the La Salle Street Station for transportation on the New York Central.

As a result of that arrangement, the New York Central Railroad at this particular time in question, I
258 believe for perhaps all time, has been the largest contributor or payer to the Parmelee company. I believe the New York Central paid approximately 24 per cent, and the next largest payer was the Baltimore and Ohio of 10 per cent.

As a result of the large share paid by the New York Central when this committee of six railroads was selected, the largest passenger carrier from each of the six terminals, the New York Central, I believe the evidence will show, was named as chairman because of its position.

Nevertheless, as chairman, the New York Central representative had one vote as did each of the other five members. There was a committee appointed in 1951, and the committee investigated the Railroad Transfer Service and contemplated an improvement of service and a change at that time. Nothing materialized.

Again in 1954 a committee was appointed, and after a year and a half, the committee eventually voted for Mr. Keeshin after all these transactions took place that have been described to you in detail.

As far as Mr. Bone was concerned, he was the New York Central representative on the committee. He had

the authority, as far as his railroad was concerned,
259 to bring the negotiations up to the threshhold of completion and then make his recommendation to a Mr. Baird, who you, no doubt, will hear about, in New York.

Mr. Baird could either approve or reject the recommendation, and Mr. Baird turns around and gives it to his superior, a Mr. Nickerson, who approved or disapproved the recommendation.

The fact is, Mr. Bone recommended Keeshin, and Mr. Baird concurred, and Mr. Nickerson agreed, and the New York Central voted for Keeshin, and contrary to what Mr. McConnell said, as far as the New York Central is concerned, the recommendation of the New York Central representative on the committee was not overlooked by his superiors.

As a matter of fact, the vote of Mr. Bone was in the interests of the public in the better service and initially at least the lower fares as has been described to you before.

Thank you.

260 By the Court: We will take a ten-minute recess.

(Whereupon a short recess was taken, after which the following further proceedings were had in open court, outside the presence and hearing of the jury:)

By the Court: I am anticipating an offer of proof. Am I correct in my anticipation?

By Mr. Meserow: I think you are correct.

By the Court: I am speaking to Mr. McConnell.

By Mr. McConnell: I don't know how to do it, your Honor, except to start with it in front of the jury and then your Honor rules, and then we take the jury away and go on from there.

By the Court: I have no objection in doing it any way you want. You mean you will start an offer of proof?

By Mr. McConnell: Yes. The Rule says I have to put the witness on the stand, have him sworn in the presence of the jury and then start examining him.

By the Court: All right, bring out the jury and put your witness on the stand.

By Mr. McConnell: I don't know any other way to do it except by stipulation, and the judge says he wants it done right, and that is the way it is going to
261 be done. It may take up some time, but I can't help it.

By the Court: That is all we have here is time. Bring out the jury.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

By Mr. McConnell: Your Honor, I want to offer in evidence the deposition taken prior to trial under the Rules of this Court, of Mr. Charles E. Quackenbush, who was an employee and managing agent of the Chicago and North Western Railroad.

Most of this deposition, the proof was taken on the issue of conspiracy. There are preliminaries to it that I suppose would be admissible on any issue raised in the case, so I would like to have Mr. Borst act here in the capacity of Mr. Quackenbush, and I ask the questions to him, and we will see what develops.

By Mr. Meserow: If the Court please, I would like—

By Mr. Thompson: He can get his name and address.

By Mr. Meserow: All right.

By Mr. McConnell: I had not asked him a question yet. I am starting with Page 108, the direct examination of Charles E. Quackenbush, duly sworn by
262 notary public Kay Arboit, and the first question is as follows:

(The deposition of Charles E. Quackenbush was thereupon read, Mr. Thomas McConnell reading the questions and Mr. Borst reading the answers:)

"CHARLES E. QUACKENBUSH, duly sworn by notary public Kay Arboit, testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name and your address?

A. Charles E. Quackenbush, 400 West Madison Street, Chicago 6, Illinois. It is my business address.

Q. Mr. Quackenbush, are you employed by the North Western, the Chicago and North Western Railway Company?

A. I am.

Q. And how long have you been employed by that railway?

A. Over forty years.

Q. And in what capacity do you now occupy?

A. General passenger agent.

Q. How long have you occupied that capacity or the assistant general passenger agent's capacity, approximately?

A. Oh, I think approximately seven or eight years.

263 Q. What are the general duties of the general passenger agent or his assistant?

A. Well, it could vary on the knowledge that the man has.

Q. One of the responsibilities that he has is the handling of passengers and their baggage at transfer points?

A. Yes."

By Mr. Thompson: Now, if the Court please, Mr. McConnell announced that he was going to read the deposition of Mr. Quackenbush, who was a managing agent, which I suppose means that he expects to read

it under Section 43(b), isn't that right, of the Federal Rules of Civil Procedure?

We object to the examination of Mr. Quackenbush by deposition at all, because Mr. Quackenbush, by our production, is here in the court room and by their request he is here, and we object to reading his deposition at all, and we ask that he be put on the stand and examined.

Secondly, we object to reading it under Section 43(b), because he is not a managing agent and never has
264 been a managing agent of this corporation and can't be examined adversely, and up to this point those are my two objections.

By Mr. Meserow: I would like to join the objection, too, your Honor, for the added reason—

By the Court: I think we have a rule of court here that permits the reading of depositions for any purposes they want, if it is relevant and material to the issues before the Court or the jury.

By Mr. Meserow: Mr. McConnell announced that the deposition of Mr. Quackenbush goes to the conspiracy.

By the Court: When he gets to that portion, make your objection, and I will pass upon it at that time.

By Mr. Meserow: Therefore, I make my objection on the ground it is irrelevant and immaterial to the issues as ruled on by your Honor, and that the only purpose of Mr. McConnell presenting this deposition is to circumvent the ruling of this Court.

By the Court: When he gets to the question
265 touching upon the conspiracy, make your objection, and I will make my ruling, and so far I have not yet heard one single question that touches upon the conspiracy, unless Mr. McConnell wants to say to me that this is the purpose of it, and then I will make my ruling.

By Mr. McConnell: I am not trying to circumvent your Honor's ruling. I am trying to get a ruling; that is all.

By the Court: I am trying to pass upon the law as I see it.

By Mr. McConnell: I understand that, and we have no problem at all.

By the Court: Keep on reading, and when we get to the question of a conspiracy—

By Mr. Thompson: If the Court please, we would like to be heard on this business of whether they can read a deposition without having some foundation laid for it. Of course, the rule says that you can read a deposition for any purpose, but that is when it is contemplated when the witness is not here, when the witness is dead or absent or something else. The man is not
266 a managing agent. They have not shown that he is, and I submit they can't show it. They certainly can't examine him if they called him on the witness stand adversely under Rule 43(b). They have to make him their own witness.

By the Court: May I hear the rule, please?

I will excuse the jury again, please. Relax for a while.

(And thereupon the following further proceedings were had in open court, outside the presence and hearing of the jury:)

267 By the Court: I am waiting for you, Judge.

By Mr. Thompson: The Rule about depositions, which is Rule 26, says:

> "Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness."

They are not reading it for that purpose. Then, of course, there is also the provision you can read a deposi-

tion for the purpose of admissions. Well, this witness has no authority to admit anything.

By the Court: May I interrupt, Judge Thompson, for a second? I am going to point out to you which one I am thinking about, and let me say for the record in the absence of the jury, I am trying not to be detoured from the major issue in the record now.

If I am going to exclude that under my original ruling, I don't want to be detoured on a technical question of the admissibility or propriety of a deposition.

Here is the one I have in mind.

268 By Mr. Thompson: 26 is the one about depositions.

By Mr. Stevens: 26(d)(1).

By the Court: I think it is (3).

By Mr. Meserow: (3).

By the Court: (Reading):

"The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: One, that the witness is dead; or two, that the witness is at a greater distance than one hundred miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition . . ."

By Mr. Thompson: Or:

"3. That the witness is unable to attend."

By the Court: That isn't the one.

By Mr. Stevens: 26(d)(1), your Honor.

By Mr. Thompson: I just read (d)(1). Maybe it is for the purpose of contradicting and impeaching:

269 but he is not doing that.

By Mr. Stevens: 26(d)(1), your Honor:

"Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness."

270 By Mr. Thompson: He is not any one of those things. General passenger agent—not manager, and he doesn't manage anything. He has the same authority as any other hired man over there, but he is not an officer or managing agent.

By Mr. Stevens: He had authority to make this contract.

By Mr. Thompson: He did not. He never claimed to have authority to make the contract.

By Mr. Meserow: Paragraph 3 you started to read is the one that is applicable, 26(d)(3).

271 By the Court: Will you argue your point again?

Mr. Thomas McConnell: Let me talk to this, if I may.

By the Court: Please.

By Mr. McConnell: Judge Thompson took two positions. First, he said we couldn't use it because he brought him into the courtroom.

Well, now, that is taken care of by Section 26(d)(2):

"The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association which is a party, may be used by adverse party for any purpose."

By the Court: That is the one I had in mind.

By Mr. McConnell: For any purpose. You can read their deposition; you can read it for impeachment, for admission. Judge Thompson has done it and I have

272 done it time and time and time again.

By the Court: That is the section, and my impression has been the only question under this limitation is relevancy or materiality.

By Mr. Thompson: No. He is not a managing agent nor an officer nor a director, and it is only where you

can read it under Section 43(b) that you can do it under Section 26(d), too.

By Mr. McConnell: All right. Now, Judge Thompson—

By Mr. Thompson: He is not a managing agent, and they have got to prove he is before they can read his deposition.

By Mr. McConnell: He is an assistant general passenger agent.

By Mr. Thompson: That is right.

By Mr. McConnell: And that under the authorities, and there are many, many of them, is a managing agent. Anybody that has anybody under his supervision under the decisions is a managing agent, under this rule.

273 By Mr. Thompson: We have better authority that he isn't one.

By Mr. McConnell: We have got lots of law on that.

By the Court: When do you begin asking questions about the conspiracy, Mr. McConnell?

By Mr. McConnell: I can't tell your Honor specifically. I just have to proceed with it.

By Mr. Thompson: The witness is here. Let him put the witness on the stand and examine him as to the matters that are in issue on the trial here.

By Mr. McConnell: I don't want to put the witness on the stand. I have got his deposition.

By the Court: I will let him proceed with the deposition.

Bring out the jury.

By Mr. Thompson: We don't need to state an exception, I guess, but I do except to the ruling.

By the Court: That will be noted.

274 (Whereupon in the presence and hearing of the jury the following proceedings were had:)

275 "Q. What capacity do you now occupy?

A. General passenger agent."

By Mr. McConnell: That is the first page, page 108.

By Mr. McConnell: (Reading)

"Q. How long have you occupied that capacity or the assistant general passenger agent's capacity, approximately?

A. Oh, I think approximately seven or eight years.

Q. What are the general duties of the general passenger agent or his assistant?

A. Well, it could vary on the knowledge that the man has.

Q. One of the responsibilities that he has is the handling of passengers and their baggage at transfer points?

A. Yes.

Q. And you specifically had the job of supervising and determining the adequacy of the transfer facilities afforded in the Chicago terminal area?

A. Generally, yes.

Q. Were you served with a subpoena to appear and bring certain named documents to these proceedings, the subpoena having been served sometime on March 12, 1956?

276 A. About that time.

Q. Will you look at this document which I would like to have the reporter mark for the purpose of identification as Quackenbush Exhibit 1, and tell me whether or not this is a true and correct copy of the subpoena served upon you?

A. I would say, to the best of my recollection, it is.

Q. Mr. Quackenbush, pursuant to the request and demands made by this subpoena, what efforts did you make to collect and bring together and make available here in the hearing room the documents specified in that subpoena?

A. Well, the files, the more or less running files on this particular subject, were kept in our general files, which I understand that you have.

Q. Had you collected that? Who collected those files in response to this subpoena?

A. I think Mr. Stewart did. I know I did not collect them.

Q. So that you would not really be in a position to determine whether or not these constitute all of the documents that satisfy this subpoena?

A. Well, since that time I have had an oppor-
277 tunity to go over some of this and I feel that it is.

Q. Let me just ask you whether or not you have included in the documents that have been collected, all correspondence, communications, reports received from passengers, passenger travel agencies, hotels in the City of Chicago, associations of businessmen, public transportation companies or the traveling public relating to the Chicago transfer service rendered during the period from January 1, 1954 to and including the date of the subpoena, which was March, 1956?

A. Yes. I would say it was all in there.

Q. All of the complaints that have been received in connection with the transfer service, either before or after October 1, 1955?

If they have been received, they are included in these papers, to the best of your knowledge?

A. To the best of my knowledge, they are.

Q. Did you participate in the committee that negotiated the five year contract with the Keeshin interests?

A. I did.

Q. Are all of your notes and memoranda in connection with those negotiations included in these files?

A. They are.

Q. Mr. Quackenbush, as general passenger agent and as assistant general passenger agent before that,
278 you were assigned to serve on the committee of the Chicago Terminal Lines, were you not?

A. That is correct, I was. I mean, I want to clarify that, the North Western Railroad was to serve.

Q. Yes, I understand, and you represented the North Western?

A. And I represented the North Western Railroad.

Q. On that group of railroads that call themselves in a somewhat informal way the Chicago Terminal Lines?

A. That is correct.

Q. Did you also represent the North Western Railroad on sub-committees of that group?

A. I did.

279 Q. Did you also represent the North Western Railroad on subcommittees of that group?

A. I did.

Q. And who else was with you on those committees and subcommittees from the North Western?

A. From the North Western? Mr. Stewart as well as Mr. Brennan attended some of those mettings.

Q. Do you know whether Mr. Brennan ever attended a meeting prior to May 15, 1955?

A. I do not.

Q. Was it your custom, however, to attend these meetings as the representative of the North Western?

A. It was my custom to attend them if I were available.

Q. Otherwise it was Mr. Stewart?

A. Mr. Stewart.

Q. Well, to whom did you report the results of these meetings?

A. Mr. Brennan.

Q. Did you ever report directly to the vice president in charge of traffic?

A. No, sir.

Q. Did you ever report directly to the president of the railroad?

A. No, sir.

280 Q. Your reporting was directly to Mr. Brennan?

A. That is right.

Q. Now, what would happen if Mr. Brennan was out of town? Would you report to someone else, or would you await his return?

A. I would await his return.

Q. Had you participated in studies, investigations and negotiations involving the Parmelee Service and transfer rate in previous years?

A. Yes, I had.

Q. Did you participate in the study in 1946 that was made by passenger traffic agents in compliance with a request made by the railroad executives?

A. I did.

Q. Are you familiar with the letter that Chairman Siddall wrote to Mr. Johnston, who was president of the Railroad Executives group in February 1946?

A. I don't recall at the moment."

Then a document was identified as Quackenbush Exhibit 2. Have we got that document?

By Mr. Stevens: All the original exhibits are in the envelope.

By Mr. McConnell: (Continuing reading)

"Q. Are you familiar with this report?

281 A. I recall it now.

Q. Did you participate in the preparation of this report or in the negotiations that preceded it, Mr. Quackenbush?"

By Mr. McConnell: Then Mr. Thompson objected that that was a double question.

"A. I was just going to say, let's confine it one way or another.

Q. Did you participate in the investigation that preceded the preparation of this communication?

A. When you speak of did I participate, do you mean I as an individual in connection with this letter here?

Q. In connection with the hearings or meetings that the committees held preceding the preparation of the letter.

A. Well, I, in those days, was chief clerk in the passenger department, and I attended a meeting which might have been the forerunner of this letter.

Q. But your participation was nominal, if at all?

A. That is right. We were just another railroad over there.

Q. All right.

A. Expressing our views.

Q. All right. Then, let me direct your attention — 282 well, did you express your views in conformity with what is transcribed here?

A. No. When we attended that particular meeting, it was in connection with something else.

Q. Then let me direct your attention to the meeting and negotiations that occurred in 1951 when Parmelee had suggested an increase in its transfer charge of a dollar to a dollar five. Do you recall that you represented the Chicago and North Western on the sub-committee appointed at that time?

A. I wonder — is your date right on that?

Q. I think so. Let me mark a few papers for you, first."

Then I asked to have the documents marked. I was talking to the court reporter then.

"A. I have given — you gave the figure of $1.05, which I question, is that correct?

By Mr. Freeman: That is what I did say.

By the Witness: Was it right?

By Mr. Freeman: The negotiations in 1951 I thought involved an increase of a charge from $1.00 to $1.05. If that is not correct, I wish you would correct that.

283 "A. In 1951 in the negotiations, they followed after the 1950 strike from 85 cents to $1.00. You might check it with your colleagues behind you there.

Q. All right. My records indicate in 1948 the charge was increased from 85 cents to $1.00, but irrespective of what the increase was, let me direct your attention to the organization of the sub-committee on which you served. Do you recall that?

A. Yes, I do.

Q. And did that sub-committee include six railroads, namely, the Santa Fe, the B&O, Illinois Central, Pennsylvania, New York Central, and the Chicago and North Western?

A. I believe it did.

Q. And you were the sub-committee member representing the North Western?

A. That is correct.

Q. Did you participate in the various meetings and negotiations of that sub-committee in 1951?

A. I would presume that I did.

Q. And did that sub-committee, in considering the request for an increase from whatever it was, invite various other carriers in to see whether or not they could do the job cheaper or better?

A. Can I look at this here?

284 Q. Sure.

A. You have a copy of it. In 1951 we interviewed other people.

Q. Well, Exhibit 4 would indicate that you interviewed the Chicago Gray Line and the Railway Express Agency.

A. That is right.

Q. What else did that committee do, as you remember it?

A. Well, we asked other transfer companies if they would be interested in it at that time.

Q. Well, did you make a selection of companies that you thought might be capable of doing the job on the basis of their experience and general character?

A. We did.

Q. Did you feel that there was some organizations in Chicago that could not appropriately be requested to bid on this because of the magnitude of the transfer work that was involved?

A. No; we didn't bar anybody from bidding.

Q. Would you regard the second page of Exhibit 4—and II direct your attention to the expression in paragraph 4:

'The magnitude of the work to be performed necessarily narrows the field of capable organizations pos-285 sessing the ability to perform the service,'

and so forth?

A. Yes, sir.

Q. So did you narrow the field and restrict your invitations to the carriers that are indicated therein?"

By Mr. McConnell: Then Judge Thompson made an objection that "What he says in his letter is that the situation narrows the field, not that the committee narrowed it. We object to asking questions on assumptions of fact which are without basis."

So I guess the question was withdrawn and another question was asked.

By Mr. McConnell: (Reading)

"Q. Mr. Quackenbush, do you recall whether or not the Gray Line Company suggested the use of bus equipment in order to transfer passengers?

A. That was the equipment they suggested when we approached them.

Q. And do you remember what the reaction of the committee was to the use of bus equipment?

A. Well, at that time the reaction to it was that we didn't favor buses, the thought being if a bus was employed, there might be a considerable waiting period.

286 By that, I mean fifteen or twenty minutes perhaps to load a bus to take it over, whereas, with a smaller vehicle there would be a shorter waiting period to take the passengers over.

Q. That is approximately what the committee incorporated in its report that they favored the more flexible type of service rendered by limousines as against buses?

A. That is right.

Q. Did you share in that opinion?

A. Yes. We only have one thing to sell, and that is service.

Q. Do you know what action was taken on this committee report?

A. Well, it was accepted.

Q. Accepted by the Terminal Lines?

A. That is right.

Q. Then, can I turn your attention to the more recent negotiations in 1954? First, let me ask you, in general, whether it wasn't true that the committee, the Chicago Terminal Lines' committee or the sub-committees in considering the various transfer services, felt that the pickup and delivery services rendered by Parmelee should stand on their own feet so far as financial support is concerned?

287 Did I make myself clear?

A. No, sir, you did not; I am sorry to say.

Q. Was it the attitude of the committees on which you served that the transfer charge or the coupon charge

would not be fixed at an amount to overcome deficits in the pickup and delivery service?

A. The pickup and delivery, to the best of my knowledge, was supposed to stand on its own feet.

Q. And, in fact, that attitude was accepted in various negotiations in 1954 and in 1951?

A. That is right.

Q. During the course of these various negotiations were financial statements and schedules submitted by the Parmelee company as requested by the committee?

A. I am not so sure whether there were or not.

Q. Well, do you recall in 1954 that rather elaborate presentations of financial material were presented by Parmelee and transmitted to all of the members?

A. Presented by Parmelee—yes, that is right.

288 Q. And in 1954 there were profit and loss statements from this operation submitted to the committee."

Then there is colloquy between counsel, and Quackenbush Exhibits 5, 6 and 7 were identified. Then the question was rephrased.

"Q. Will you look at Quackenbush Exhibits 5, 6 and 7, please, for a minute."

Then there was some more colloquy between counsel, and the question apparently was again rephrased.

"Q. Mr. Quackenbush, the question I put to you was do you recall the document, Exhibit No. 5, having been prepared by the Association and transmitted to the various parties, a copy of which you received?

A. Yes, I do.

Q. Is it true that this document contains a whole series of schedules dealing with various phases of the Parmelee organization and prepared by Parmelee and submitted to the Association for transmittal to the members?

A. I presume it covered the entire request which we probably made on the Parmelee Company at that time.

Q. Mr. Quackenbush, as a matter of fact have you ever made a request for information from Parmelee 289 that you didn't secure in the course of negotiations?

A. No, I can't say that I ever have.

Q. Or that the committee did?

A. Well, that, I wouldn't know what the other members might have asked for. You can appreciate that.

Q. I can. I meant, the committee acting as a committee, while you participated.

A. No. I think that anything the chairman of the committee might have asked for, he got.

Q. And do you have any recollection or familiarity—I am perfectly aware that I am taking you back several years, and I don't mean to do it any further than this, but do you have any recollection or familiarity with the financial statement that has been marked Quackenbush Exhibit No. 7, and do you remember receiving that from Parmelee?

A. At the moment, I do not.

Q. All right. Do you have any recollection of having received schedules prepared in the form of and copies of Quackenbush Exhibit 6 during the course of the 1954 negotiations?

A. I remember this rather vaguely.

Q. Now, I would like to direct your attention to your activities on the subcommittee which was formed 290 some time in 1954 and which negotiated with various carriers, including Keeshin and Parmelee and others and which ultimately led up to the 1955 decision.

Did you attend most of the meetings of that subcommittee?

A. I did.

Q. And where you did not attend, Mr. Stewart attended, or, as we will find in the last meeting or two, Mr. Brennan attended?

A. That is correct.

Q. Were you at the meeting on September 15 and 16 when the Railway Express Agency and the Landon Cartage and the Gray Line, Keeshin and others, were interviewed in 1954?

A. I am not sure as to whether I was at—if there was more than one meeting—

Q. You are absolutely right. My notes show Stewart attended that meeting, and I shouldn't have asked that question. Mr. Stewart attended for Mr. Brennan, and so you were not at that meeting, and I will pass that.

What was the first meeting that you attended at which Mr. Keeshin appeared and presented any part of his proposal? Here, I think I can be even more helpful. I think the first meeting that I have a note on that you attended was November 23, 1954.

Apparently you didn't attend a couple of these meetings but had Mr. Stewart attend.

A. That is right. I had Mr. Stewart start out attending these meetings, because we felt at that time we would turn this subject of transfer over to Mr. Stewart.

Q. I see; and why did you feel at that time that you were going to turn it over to Mr. Stewart?

A. Because I was asked to take up other duties.

Q. What other duties were they?

A. Train service.

Q. Do you recall your first meeting with Mr. Keeshin?

A. No, I do not.

Q. Do you recall Mr. Keeshin suggesting that baggage could be handled on the basis of pickup and delivery between stations, I mean, on an hourly basis, every hour?

A. I don't recall that.

Q. Do you recall that Mr. Keeshin suggested that his service would be by means of trailers, and that the railroad employees would be required to bill, sort, and load and unload the trailers?

A. You have a double question there.

292 Q. I am sorry; I do. I will try and simplify it.

A. If you want to break it down to trailers, that is something else.

Q. Do you recall the type of equipment that Mr. Keeshin proposed to use?

A. In connection with the transfer of baggage?

Q. In connection with the transfer of passengers first.

A. Passengers?

Q. Yes.

A. He suggested station wagons.

Q. Did he also suggest buses?

A. I don't recall that he did.

Q. Did he suggest the use of VolksWagons at the beginning?

A. No; he brought VolksWagons out to let us pick what type of vehicle we wanted.

Q. But you don't recall that he ever suggested the use of buses?

A. No, sir.

Q. Do you recall that he suggested a five-year contract without any change in rates?

A. No, sir, I do not recall that.

Q. You do not?

293 A. No.

Q. Do you recall his suggesting that he would use the Parmelee men if he got the contract?

A. I don't recall what he intended to do as far as setting up his personnel was concerned.

294 Q. All right. Did you make any memoranda of these meetings that you attended of the sub-committee?

A. Not unless they are in those files there.

Q. I have been unable to find them. Can you determine which of these files belongs to you?

A. These three here are ours, the Passenger Traffic Department files.

Q. Do you know, without too much difficulty, whether or not there are any memoranda in there dealing with these committee meetings? We have been able to find none.

A. You have?

Q. We have not been able to find any.

A. If you have not found them, I presume there are none in here.

Q. It would be unfair to take my version of it as authoritative.

Let me ask you this, and see if I can shorten it, Mr. Quackenbush:

To the best of your knowledge and ability to recollect, do you know whether or not there were any such memoranda prepared of these sub-committee meetings that either you or Mr. Stewart attended?

A. I don't believe there was.

295 Q. Are you familiar with the proposal that was made in writing by Mr. Keeshin on December the 15th, 1954?

A. Yes, I am familiar with it.

Q. Do you know what equipment he proposed for passenger and baggage handling?

A. I don't know what equipment he proposed at the moment."

By Mr. McConnell: Then the report was marked as Quackenbush Exhibit No. 8.

By Mr. McConnell: (Reading)

"Q. I ask you, Mr. Quackenbush, if, in general, you recall the report made by the sub-committee on which you served on June 3, 1955?

A. Do I recall this report?

Q. Yes, sir.

A. Yes, I do.

Q. Do you recall that Mr. Keeshin suggested the use of station wagons with heaters and air conditioning on December the 15th, 1954?

A. No; I don't recall as to what meeting with Mr. Keeshin in which he suggested that.

Q. Well, I intended for you to refer to the written proposal that Mr. Keeshin made on December the 15th, 1954, which is included as an enclosure in the report.

296 A. Yes; I do recall it now that I have it before me.

Q. Was the matter of the heating equipment that the vehicle, the station wagon had, a factor?

A. Well, it would be a factor as far as winter weather was concerned.

Q. Had you observed the operation of the station wagons during the winter?

A. Of 1954?

Q. Of 1955, from October 1 of 1955 to 1956.

A. I did not use the present vehicles during the winter months at all.

297 Q. Do you recall how the station wagons operate as far as putting baggage in is concerned?

A. Yes, they put it in the back.

Q. Is there any separation between the passenger department, the passenger area and the baggage area?

A. You mean to make them airtight or something like that?

Q. Yes.

A. No, not to the best of my knowledge.

Q. So that in the event the back of the station wagon were opened to put baggage in on a cold day out in the

street, then the cold air would come right into the vehicle, would it?

A. I presume it would be possible.

Q. Was the air conditioning of these vehicles a factor you gave any consideration to?

A. Yes.

Q. Have you observed the operation of the air conditioning equipment during the past summer of 1956?

A. Yes.

Q. Was the air conditioning in operation?

A. Yes, it was.

Q. Was it in operation throughout the summer?

A. That I don't know. I don't ride every day.

298 Q. Were there many, many times when the air conditioning was not in operation during the summer?

A. That, I don't know.

Q. Do you know what type of air conditioning equipment was installed in the station wagons?

A. No, I don't.

Q. Do you know whether it was a big or a small unit?

A. I don't know.

Q. Have you made any observation or determination of what type of air conditioning was installed?

A. No, I have not.

Q. Do you know whether or not the VolksWagons were air conditioned?

A. They were not.

Q. You made an inspection of the equipment that was offered by Keeshin on June 2, 1955, did you not?

A. That is right.

Q. That inspection was made at the Union League Club, or at least you assembled there?

A. We assembled there to go out where the equipment was located.

Q. Where was the equipment located?

A. I don't recall offhand the address out south now.

Q. What type of equipment did you view at that time?

299 A. He showed us the trailer, the tractors. He showed us two types of station wagons, as I recall now. I believe it was a Pontiac and a Ford. He also showed us the VolksWagon, and he also showed us a bus, a school bus I am speaking of.

Q. Has he since installed several school buses in his operation?

A. That I don't know.

Q. Do you know what the operation is now, Mr. Quackenbush?

A. Yes; as far as we are concerned, we are getting these Ford station wagons over in our place as far as passenger handling is concerned.

Q. Is there any instance when these buses which I think are called coachettes are used from the North Western Station?

A. I have not seen them.

Q. Would you object to their use?

A. I couldn't tell you that unless I had seen the vehicle.

Q. You have not seen these vehicles?

A. I have not seen the coachettes.

Q. Did you approve the use of the bus in the Keeshin service?

300 A. The bus?

Q. Yes, the use of a bus.

A. The bus that we saw out there, I did not approve of.

Q. Did you approve of the VolksWagons that you saw out there?

A. I did not, because they were not air conditioned.

Q. Well, were you interested in the safety of passengers?

A. Well, that would be a factor. That would have been a factor, of course.

Q. But you did not approve the VolksWagon?

A. That is right.

Q. Did you not approve it because of its comfort features, as far as passengers' comfort and convenience was concerned?

A. I did not approve it because they could not be air conditioned.

Q. Did Mr. Keeshin give you assurance at the time that they could be air conditioned?

A. He assured us that they could be air conditioned, the VolksWagons, but it was not workable.

Q. Did you look at the baggage compartment in the VolksWagon to determine whether or not it was adequate to handle the number of passengers it could seat?

301 A. The vehicle could not be air conditioned. I wasn't interested in the rest of it.

Q. Did you notice whether or not the station wagon couldn't be air conditioned?

A. Oh, yes.

Q. So the fact of the air conditioning and the utilization of air conditioning during this summer period was very important to you as far as equipment was concerned?

A. Speaking for our company, I thought it was an important item.

302 Q. Did you ever mention this at any committee meeting at which other carriers were interviewed?

A. Well, that was the general concensus of the subcommittee.

Q. Did you ask Parmelee to provide air conditioning equipment?

A. Not that I can recall.

Q. Do you know what this total equipment that Keeshin proposed to use was estimated to cost?

A. No, I don't.

Q. Did you make any notations of what Keeshin's representatives cost would be?

A. He told us he was going to spend $500,000.

Q. And that would be on equipment?

A. He didn't specify whether it was on equipment or what it might be. He said he would put up $500,000.

Q. Do you know whether he did?"

By The Court: It is now 5:00 o'clock. We will recess until tomorrow morning at 10:00 o'clock, and please don't discuss this case with anyone, not even among yourselves, and let no one talk to you about it.

Have a pleasant evening.

We will recess until 10:15.

303 (Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Tuesday, April 26, 1960, at the hour of 10:15 o'clock a.m.)

304 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Tuesday, April 26, 1960
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Francis J. McConnell,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

305 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

306 And thereupon the following further proceedings were had herein:—

By The Clerk: No. 56 C 323. Parmelee Transporation Company vs. John L. Keeshin, et al. The case on trial.

(The following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By The Court: Does anybody want to talk to the Court before we call the jury out?

By Mr. Thompson: Yes.

By The Court: All right.

By Mr. Thompson: We made our objection yesterday that this—

By The Court: That this deposition—

By Mr. Thompson: —that this witness, whose deposition is being read, is not a managing agent, and the witness is available, as I said to the Court yesterday, and he is in the court room, and unless he is a managing agent, of course he is not entitled to testify as an adverse witness. They can tell him as their own witness if they please.

This deposition that was taken, which was taken, of
307 course, three years ago, was really a discovery deposition, while under the Federal Rules, a deposition is for both purposes, which I think is bad practice, but anyway that is what the rule is, and so there are questions that are coming now that are leading questions, argumentative questions, and they are questions which I think would be clearly objectionable if the witness were on the stand.

I think the Court should be forewarned that we are proposing to object to them on those grounds, on the theory that this is not an adverse witness, and that he can't be cross examined.

308 A point that I want to mention, and we have authorities to that effect, is the rule laid down by the cases in that a managing agent is an agent invested by the corporation with general powers to exercise his judgment and discretion in dealing with corporate matters.

He does not act in an inferior capacity under close supervision or direction of superior authority, and we claim that that exactly defines Mr. Quackenbush's position, and that therefore he is not subject to being called under this rule.

Another thing I want to say to the Court at this stage is that we spent an hour yesterday listening to the reading of a deposition, and I think there was no evidence that

even came close to the issue that is the one on trial, as I understand the Court's ruling.

I appreciate the limits of just what the trial is are a little difficult for me to understand, and I assume my opponents are suffering from the same difficulty, but nevertheless examination of witnesses certainly ought to be directed to this question, and it seems to me Mr. McConnell should say to the Court that he has no evidence to support—

309 By the Court: May I interrupt, please?

By Mr. Thompson: Yes, sir.

By the Court: Mr. McConnell was very frank when he said twice before, and said it yesterday before the jury, "I do not propose to offer any evidence on public economic injury. I do not propose to offer any evidence about the increase in rates or the nature or the inferiority of service."

If I am misquoting, I don't mean to do that, Mr. McConnell. I am summarizing what you said.

He offered to stipulate to that effect and to have me make an immediate ruling upon the Court's rule on the separation of issues and to deny him an offer of conspiracy, and you refused to accept the offer, refused to stipulate.

I have no choice but to permit him to prove anything that may lead to the proof of public injury. I have no way of judging from the nature of the questions that have been asked so far as to what he is going to prove with them. They have all been preliminary.

Now if and when he discusses anything beyond the question, and I said I will entertain any motion, I will hear you on that point. But until then I do not propose to deny him the right to prove public injury in any

310 way that he wants to or can because his general offer was declined.

By Mr. Thompson: Yes, I declined to stipulate.

By the Court: That is right.

By Mr. Thompson: And I said this should take the regular course—

By the Court: That is right.

By Mr. Thompson: And I still take that position, but if he has no evidence on the issue that is here, he should say so, and I don't need to stipulate whether he does or doesn't. I think he has no proof of public injury, but that is for Mr. McConnell to say, whether he does or not, and I think that this matter of sitting here day after day listening to the kind of stuff we listened to yesterday afternoon doesn't even lead to the question of what we are confined to.

By the Court: I am not sure about that. The questions and the answers so far, as I say, have been preliminary.

By Mr. Thompson: They sure have.

By the Court: But they may lead to the question of rates. They may lead to the question of service. They have talked about the air conditioning. They have talked about the type of vehicle. Now they may 311 have some tendency to prove public injury. Until that point I am not going to bar their proceeding by saying they can't ask those preliminary questions.

When you make an objection to any question that touches upon anything beyond that question of public injury, I will make an immediate ruling.

By Mr. Thompson: Well, of course the purpose of separating issues is to shorten the trial.

By the Court: That is right, but not to deny him the right to prove public injury.

By Mr. Thompson: Certainly not, and if they have proof of public injury, we would be glad to acquiesce in their presenting it, but until they make some effort

to prove public injury by a good faith statement to the Court that that is what they are offering evidence for—now this deposition was not taken with any thought of the subject being confined to a single issue like this.

If we are going to spend the same amount of time going through all of this business, why we might just as well try this lawsuit, and that is the point I want. I either want this case tried or I want it confined to the issue.

By the Court: Your statement is very clear in my mind. I am also trying to try this lawsuit as I see
312 it, namely, to give them a chance to prove public injury and not to deny them that privilege.

All right, proceed.

Call the jury.

313 By Mr. Thompson: Does the Court adhere to its ruling that he may go ahead as though this fellow was a managing agent without showing that he is?

By the Court: If and when you show me by competent testimony that he is not what he answered in the questions and answer that he is, I will reconsider it. Until then, I will let it go in.

By Mr. Thompson: Your Honor, we don't have to prove the negative, that he is not a managing agent. They have to prove he is one.

By the Court: I think they have some proof in there to that effect.

By Mr. Keating: May the record note an objection by the New York Central to the use of a deposition when the person is here in the courtroom, in person.

By the Court: That has been argued yesterday, and I overruled it.

(Whereupon, in the presence and hearing of the jury the following proceedings were had:)

By the Court: Good morning, ladies and gentlemen. All right; proceed.

By Mr. McConnell: I will continue with the deposition of Mr. Quackenbush—

By Mr. Thompson: What page, Mr. McConnell, please?

314 By Mr. McConnell: Page 142, the second question from the bottom of the page. Would it be all right to read two or three questions again in order to get the continuity of this thing?

By the Court: Surely.

By Mr. McConnell: (Reading)

"CHARLES E. QUACKENBUSH, being first duly sworn by Notary Public Kay Arboit, testified as follows:

Direct Examination (continued).

Q. Did you make any notations of what Keeshin represented his costs would be?

A. He told us he was going to spend $500,000.

Q. And that would be on equipment?

A. He didn't specify whether it was on equipment or what it might be. He said he would put up $500,000.

Q. Do you know whether he did?

A. No, I do not.

Q. Did Parmelee likewise in March of 1955 offer to spend $500,000 on equipment to be installed within six months to a year?

A. Let me refresh my memory on the date.

Q. The March 15th proposal is included in the last exhibit that you are looking on, which is identified 315 as Exhibit 8.

A. Parmelee offered to spend $500,000 for new vehicles.

Q. Did you ask anybody other than Parmelee to figure this on the basis of air conditioning equipment?

A. No. The field was narrowed down to two people.

Q. Hadn't Willett made a proposal in February and then again in March?

A. He had.

Q. You didn't regard his proposal of any substance?

A. We felt that the man did not look sufficiently into the matter and, under the circumstances, we felt that Mr. Keeshin had and, of course, the Parmelee Company had been in business for over one hundred years and we felt that they ought to know.

Q. Had you discussed this problem with the Willett Company at all?

A. Personally? No.

Q. Isn't it true that various important executives of the Chicago and North Western had been very solicitous of the Willett Company and sought its interest in this proposal?

A. I believe—"

By Mr. Thompson: If the Court please, we ob-
316 ject to that.

By the Court: Objection will be sustained.

By Mr. McConnell: (Continuing reading)

"Q. Do you know what kind of equipment Mr. Willett proposed to use?"

By Mr. Thompson: I object to that.

By the Court: Objection will be sustained.

By Mr. McConnell: (Continuing reading)

"Q. If Willett had proposed to use buses, would that be one reason why you felt that he wasn't sufficiently informed?"

By Mr. Thompson: Same objection.

By the Court: Objections along the lines of what any other competitor or bidder did will be sustained.

By Mr. McConnell: Well, I offer to prove—shall I do this out of the presence of the jury?

By the Court: All right. Have you reached now an impasse?

By Mr. McConnell: I don't think so.

By the Court: All right. Proceed with your questions and answers. I will give you a chance to make
317 an offer of proof.

By Mr. McConnell: That is what I mean.

By the Court: All right; back to your cards.

(Thereupon, out of the presence and hearing of the jury the following proceedings were had:)

318 By Mr. Meserow: If the Court please, before Mr. McConnell makes his offer of proof, I would like to make an objection to his offer of proof of this witness Quackenbush because he is an adverse witness and the cases hold that it is within the discretion of the Court and it is not an abuse of discretion for the Court to deny counsel to make offer of proof of an adverse witness.

By the Court: I don't want to abuse my discretion or stretch my discretion. I am going to rule upon the evidence as I see it and as I get it. I am protecting the rights of all parties.

Let me ask, Judge Thompson and the other lawyers, step up here, please.

Do we have any basic agreement that we can enter into here that the contract of Parmelee had expired at the time the new contract was entered into?

By Mr. Thompson: Oh, sure.

By Mr. Meserow: They had no contract. There was an oral understanding.

By Mr. Thompson: I know, but that is a con-
319 tract. They had an oral agreement or continuing arrangement until June 30, 1955. I think that is—

By the Court: Do you say "No"?

By Mr. O'Connell: No, it hadn't expired. It ran until July, 1955. We are talking about things that happened in February and March.

By the Court: When was the new contract entered into?

By Mr. McConnell: When did the contract of Parmelee expire?

By Mr. Freeman: It did not expire. There were contracts from time to time or understandings and agreements that continued.

By the Court: When was the new contract entered into?

By Mr. McConnell: September 15, 1955.

By Mr. Meserow: It didn't go into effect until October 1st, 1955.

By the Court: When did the fiscal year or contract year end between the Parmelee and Terminal?

By Mr. Thompson: Well, it went from year to 320 year and always, as I understand it, was made from year to year, July 1 to June 30.

By Mr. Freeman: That isn't true. It did not go from year to year in any specific way such as Mr. Thompson indicates.

By the Court: Can we agree there was no written contract between Parmelee and the Terminal?

By Mr. Freeman: We can't agree to that because there was one written contract with the Nickel Plate Railroad entered into in 1941 and renewed several times, and the last renewal was in 1952. That is the last supplement.

By the Court: For how long was it renewed then?

By Mr. Freeman: In 1952 for an indeterminate period subject to termination by the superintendent of

service if Parmelee's service was unsatisfactory. That was the only basis of termination and the only term of the contract.

By the Court: Then we cannot agree on anything.

By Mr. Keating: The Nickel Plate isn't a party.

321 By Mr. Freeman: You asked me.

By the Court: I am merely talking for the record, the same as all of you folks are.

By Mr. Thompson: There are twenty-one railroads having passenger terminals.

By the Court: Is Nickel Plate a party defendant in this case?

By Mr. Thompson: No, and the only railroads that are party defendant are the six railroads that were on this negotiating committee which was appointed by the Terminal Lines to negotiate for them.

322 The C&EI, or I mean the Nickel Plate, which is a small railroad having very limited passenger service, did have some sort of a written agreement, which was, in general, the same.

By the Court: Is there any written contract between Parmelee and any of the defendant railroads before me?

By Mr. Thompson: No.

By Mr. Keating: There was a written notice of termination.

By Mr. McConnell: There is no written contract.

By Mr. Freeman: There was no written formal contract, but there were exchanges of correspondence which could be interpreted as written contracts between the terminal association or the terminal railroads individually and Parmelee, these defendants, too.

By the Court: All right; make your offer of proof.

By Mr. McConnell: The question that is objected to is:

"Q. Isn't it true that various important execu-
323 tives of the Chicago and North Western had been very solicitous of the Willett Company and sought its interest in this proposal?"

And I offer to prove by the deposition that the answer was as follows:

"I believe Mr. Feucht mentioned that we should get in touch with Willett to see if he would be interested, which we had already done."

The next question was:

"Do you know what kind of equipment Mr. Willett proposed to use?"

The answer was:

"No, I don't, offhand."

The next question was:

"If Willett had proposed to use buses, would that be one reason why you felt that he wasn't sufficiently informed?

"A. Well, I don't know whether that might have been the answer, but so far as I know, I don't know whether he made any such suggestions or not, unless I can refer to the files, if there is anything on it."

324 That is as far as we got. I offer the answers to the questions.

By the Court: The objection will be sustained to the admissibility of that offer of proof.

Let me again, for the record, in the absence of the jury, state my purpose in presiding over this hearing from now on, which is this:

Anything that goes or tends to directly or indirectly to establish or prove public injury is admissible and proper.

Anything that has a tendency to establish or prove a conspiracy, which includes negotiations with other people or the method of the procurement of this contract,

will be inadmissible and held at this time to be deferred until the jury determines the issue of public injury.

I can't make it any clearer than that, and I made it clear a week ago, and I am repeating it now.

You may use your judgment on that, or you may
325 require actual rulings upon each and every question.

I cannot stop you from doing that.

By Mr. McConnell: Your Honor, let me make my position perfectly clear. I don't want to be captious about this.

By the Court: Let me interrupt. You said yesterday, and I am with you a hundred percent, I don't want to do anything here that will stop you from making a good record. I want to help you.

By Mr. McConnell: I understand that, and I don't want you to think that I am just being captious about it, because I am trying to do what your Honor wants.

By the Court: I want to be as frank as I know how, and so do you. In the first place, I want to establish one principle here, the right of separation of trial.

Secondly, as an isolated issue, the propriety of establishing public injury in this case. Beyond that, you should make your record, and I want to permit you to make the record in every way possible, so that when
326 the Court of Appeals and the Supreme Court gets it, there will be no dilly-dallying and no evasion. This is it, and they have to pass on it.

By Mr. McConnell: Our trouble, your Honor, is quite basic. It has nothing to do with your Honor and it has nothing to do with me. It is just inherent in the lawsuit.

By the Court: I didn't get the last part of your statement.

By Mr. McConnell: I say it has nothing to do with your Honor and nothing to do with me. It is inherent

in this lawsuit. The question of conspiracy of what is and what is not a conspiracy, as your Honor knows, is made up usually of circumstantial and inferential evidence which goes all over the field of the activity of the different parties.

That is conspiracies usually are not held out in the open. You have to put them together by bits of evidence and here and there, and I want to be perfectly frank with your Honor, that some of the evidence
327 that is contained in the Quackenbush deposition, taken with other evidence of other witnesses, could be and would be, if I were permitted to try that issue, put together into an argument that it does prove conspiracy.

328 On the other hand, on the issue which your Honor has suggested here, there is much of this which taken apart and viewed separately, apart from any conspiratorial action, would tend to prove the very issue which your Honor has permitted us to submit to the jury, and the trouble, the inherent trouble with our position is that the two things overlap. There isn't any fine clear distinction between this evidence, because it could be offered on both issues.

If your Honor wants me to limit my offer, pursuant to your Honor's ruling, where you have told me that you will not receive it at all on a conspiracy issue, I can state to your Honor that in view of that ruling I am only offering it here on the basis of this separate issue.

What I would like to do and what my proposal was to Judge Thompson, and I don't know why he refused it as he talks about saving time, and I am interested in that, too, but as far as this lawsuit is concerned, I don't have to have it spelled out on a blackboard for me, as I
329 know I am on my way to the Court of Appeals, and I would like to get it there just as fast as I can.

What I would like to do, if he would waive the objection of having witnesses sitting up here or reading depositions, is to make a written offer of proof for this record and quit. Let him object to it, and your Honor could rule it out, and then direct the jury and go on from there, but I can't do that in the absence of a stipulation.

By the Court: The record shows that you are not being barred or limited in your proof of conspiracy or any other issue in this case. It is merely deferred until the public injury is established first.

You will have your right, if you establish that, to proceed with your proof of conspiracy. I don't have to spell it out, and we all understand each other, what proof of public injury means.

It means, was the public injured by this—exactly
330 what Judge Castle said in his opinion and what the other citation that I read to you said. I am limited to that.

When you pass that issue, we will go on with the next if it is sustained. If it isn't, I maintain and I have maintained that it is a bar to the recovery, and it ends the lawsuit.

By Mr. McConnell: Yes, but, your Honor, that is a right to say that, and I say this with all due deference, but if I can't offer the evidence of conspiracy, I certainly am not permitted to prove it, certainly not at this time at least.

By the Court: I am ruling that you cannot, and I will not permit any offer of conspiracy before a verdict is rendered on the question of public injury. You may make your offer of proof, and here is the record, and it is up to Judge Thompson and his associates to do whatever they please then, but you have a right to make your record, and I want you to make it.

By Mr. McConnell: I have only one way to make it under those circumstances, and that is to do just what
331 I am doing. There is no other way to do it, and it might take two weeks or three weeks.

I dont know how long it will take, but that is what I have to do. I have no other alternative.

By the Court: I have ruled on that, and the ruling stands.

By Mr. McConnell: All right.

All of these questions are going to be more or less—well, we have to have the jury back, I guess. I don't know any other way to do it.

By the Court: Do you want to say something, Judge Thompson?

By Mr. Thompson: No, except if it is going to take two or three weeks, let's try the lawsuit. It will only take two weeks to try the lawsuit.

By Mr. McConnell: It takes longer to make an offer of proof than it does to try a case.

By Mr. Thompson: I agree.

By Mr. Meserow: Your Honor,—

By the Court: Beyond that now, we are going
332 to try this on the one issue, and if it takes two weeks, time is not of the essence in the trial of a lawsuit.

By Mr. Meserow: Your Honor, I was going to say—

By the Court: It is not the only element.

By Mr. Meserow: —Your Honor, I was going to say that Mr. McConnell admits in open court that he is not going to present any proof of public injury. If he isn't, there is nothing to stop him, without any stipulation by the defendants, to proceed with his offer of proof.

333 By Mr. McConnell: I didn't say I wasn't going to offer—

By the Court: That is exactly what I said.

By Mr. Meserow: We don't have to stipulate.

By Mr. McConnell: I didn't say I wasn't going to offer evidence of public injury. I am offering evidence of public injury when I offer conspiracy proof. I have said that from the beginning of this lawsuit, and I will continue to say it until the Circuit Court of Appeals says—

By the Court: You are offering it under the presumption that it is going to establish public injury.

By Mr. McConnell: That is right.

By the Court: I am holding that it is a separate and distinct issue and has no bearing on public injury. It is the public injury issue that is before this jury now, and that is what we are trying.

You may make an offer of proof by conspiracy, what you intend to prove by it, and it is your opportunity.

334 By Mr. McConnell: The rules say how I have to do it, and I am bound by the rules. Your Honor is bound by them, and counsel are bound by them, and there is nothing I can do about it.

By the Court: I guess we need the jury back.

By Mr. Thompson: Of course, I submit he has no right to make any offer of proof on an issue that is not before the Court.

By the Court: That is where we are splitting hairs again. I am talking not about any particular lawyer, but when counsel says he is offering certain proof to establish public injury, I can't anticipate and rule him out. I have to give him the opportunity to make his record. I want him to make the record.

I can't say, "You can't make an offer of proof, because it is not on this issue." If he says it isn't, I will sustain the objection, but he says it is hitting toward public injury.

By Mr. McConnell: I say it is perfectly relevant 335 on the issue. I have said it and said it.

By Mr. Thompson: I know Mr. McConnell's posi-

tion, and I am not quarreling with it, but I say if this is a separate trial, so that we are trying this single injury, if it can be defined, and if the Court—and if that is the issue, then he has no right to offer proof on any other issue, and that is what is putting the defendants in a terrible situation in this case.

If they have a right to make their offer of proof of things outside the limited issue, which the Court is trying, then there is a record there made of their offers of proof, and when it comes to being reviewed, the reviewing court can read their offers of proof and say then that if this proof had been received and if it had been tied up with other proof that might have been relevant to the offers of proof, then there is a prima facie case made, and the defendants have had no opportunity whatever to meet any of that.

336 We can't offer a defense against an offer of proof, and we have a record here that is utterly impossible for us to defend if they can make offers of proof outside the issue which your Honor is trying.

If this were a simple case like somebody suing on a note, and the defense was that he had paid the note and that fraud was involved in a half dozen defenses, and the Court separated out the single defense that the note was paid and tried that issue, you would have a clean-cut plain issue that could be tried, and there would be no ifs or ands about it, because if the note were paid, of course he can't recover again, and all the elements of fraud and everything else would be out of the way.

This isn't the kind of a case where you can take a knife and slice it down into little pieces, as Mr. McConnell has said, and I appreciate there is a difficulty in knowing what to prove on this single issue, but the issue has been defined by the Court a good many times.

337 It seems rather clear to me what the Court has designated as the issue to be tried here. If that is so,

then the offers of proof must be limited to the issue that is here, and you can't offer proof of things that are outside this limited issue.

338 Otherwise, the defendants are in a hopeless situation and can't possibly meet it. We can't disprove an offer of proof.

By Mr. McConnell: I would like to answer that, your Honor.

By Mr. Owens: Mr. McConnell, I have not said anything on this issue yet.

By Mr. McConnell: You go right ahead and say anything you want.

By Mr. Owens: Your Honor, you have defined the issues. We are supposed to be proceeding according to the definition you have given. Mr. McConnell stands before your Honor and he says, "I am not accepting your definition, but my definition is that conspiracy is public injury," and he says, " Iwant to go ahead with this proof of conspiracy."

By the Court: I said I will not permit an offer of conspiracy, an offer of proof or any proof of it.

By Mr. Owens: He said in his last statement they are synonymous, conspiracy and public injury. Your Honor should at this time clearly limit him.

339 By the Court: If you will follow what I said a few minutes ago, I said I will not accept any offer of proof of conspiracy or any proof of conspiracy. He has to address himself to anything that has a tendency to prove public injury directly or indirectly, but not by conspiracy.

By Mr. McConnell: May I be heard on this?

By the Court: Certainly.

By Mr. McConnell: I think, and I may be wrong, but I don't think so, and I think your Honor wants the issue

decided by the Court of Appeals and not the question decided of whether or not it is an academic question.

What is going to happen if I don't make an offer of proof? I have taken a position before this Court, and I have taken it as clearly as any lawyer can take it. You can divide up the issue, any issue in the case under the rules of this court providing you are dividing up an issue which is severable and is a separate issue.

I have said this, and I have said it over and over again; that whether you are talking about Judge
340 Castle's opinion or any other opinion, that the public injury which is involved in the anti-trust laws was defined by the Congress, and one of the things they said was that public injury was a conspiracy.

I know your Honor is not going to permit that to go to the jury, but I don't want the upper court saying, when we get up there, "What are you talking about? You are talking about an academic issue, because you never offered any proof of conspiracy. You never offered it. You have nothing in the record here upon which you can go up."

Judge Thompson will be one of the foremost exponents of that rule. He will be up there saying, "This is academic. Mr. McConnell never was injured . . ."

By the Court: You can argue more effectively that you have tried to offer proof on a conspiracy, and the Court barred you.

By Mr. McConnell: Yes, but what is it? That is the purpose of the offer of proof, so the upper court can see whether you are talking nonsense or talking evidence.

341 I have a right, and I insist on it, of having a right in this court or any other court to make a record in this case.

I don't quarrel with your Honor if you want to make a ruling against me. I have been ruled against by courts for thirty-six years. It isn't any new experience to me, but I have a right, and your Honor has told me so, as a lawyer and representing a litigant in your court, to make my offer of proof in accordance with the rules.

By the Court: But not on conspiracy, only on the issue before the jury, and that is the ruling.

I am ruling now specifically that you cannot make an offer on conspiracy, that you can go as far as you want on the question of public injury, and that conspiracy has nothing to do with it.

By Mr. McConnell: You are defining that, and I am saying that your Honor is wrong, and I am trying to make a record here where I can attack that ruling in the upper court.

By the Court: The Court of Appeals will re-
342 verse me if I am wrong by saying, "The Judge should have given you a chance to make your offer of proof."

I am reserving it until after this issue is disposed of, both by offer of proof and by the proof itself.

By Mr. McConnell: May we have a five-minute recess?

By the Court: Yes, you may have ten minutes.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

343 By the Court: Can you and I, Mr. McConnell, agree on an offer of proof towards public injury without shifting the jury in and out on every question?

By Mr. McConnell: I really don't think it makes any difference because you are going to direct a verdict against me anyway when we get through.

By the Court: I am talking about making a record. I want you to protect and preserve your record in every human way possible. I don't want to have the jury in and out every two minutes on every question and answer, not because of expediency, but because of my determination that I am right on the question of excluding from this jury every other issue except public injury.

I will give you leave to make an offer of proof on that public injury by a statement in the record.

By Mr. McConnell: Well, on the issue of public injury, as you have defined it —

By the Court: Wait. I will determine that question as to what constitutes proof of public injury. I don't want the record to show that I am barring you from making any offer of proof of public injury. I want to protect that right, and I want you to make every offer of
344 proof you want to make on that subject. I want to have the right to exclude from it anything that has no bearing on it.

By Mr. McConnell: You just told me I couldn't do it so I don't know what to say. I don't know what to do here.

By the Court: What is your decision?

By Mr. McConnell: My decision is there is nothing I can do. If your Honor tells me I can't do something, I am not going to get in contempt of this court just to be funny about it.

By the Court: Oh, no. I never dreamed of anything like that —

By Mr. McConnell: You tell me not to do anything. I am a lawyer, an officer of this court. You tell me I have to do something, I have got to do it. I don't know anything else to do.

By the Court: I am ruling —

By Mr. McConnell: I want to make an offer of proof, your Honor. Let me say this, I am not sure in my mind whether I have to make an offer of proof in view of your Honor's ruling, but I don't know. After all, we are in an absolutely brand new field here.

By the Court: What you don't know is what I am trying to clarify. I want the record to show that I am giving you every opportunity to make an offer of
345 proof on the issue before the jury. I understand that there is no clear line of demarcation on it. Make your offer an oral offer of proof along those lines. Then you will have your pie and you will eat it. You will be able to have in the record what you offer to prove and what I barred, excluded. Is that clear?

By Mr. McConnell: No, it isn't clear because the rules say I can't make an offer of proof that way. I have to make it by a witness.

By the Court: That is my ruling.

By Mr. Owens: We take exception to that also, to your Honor's ruling, because if he makes an oral offer of proof, he is going to put in all this material on conspiracy.

By the Court: That is my ruling on the record.

By Mr. McConnell: Well, I don't know whether your Honor has changed your previous ruling or not.

By the Court: I didn't. That is my ruling all the time. I am consistent in that ruling. I don't want any offer of proof and I will not permit any offer of proof of conspiracy. I am giving you every opportunity to make an offer of proof on public injury.

By Mr. McConnell: Your Honor, the basic problem that you and I face is that we don't agree on what
346 is proof of public injury.

By the Court: Yes, we do. We agree on that fully. We don't agree as to the principle of law on it, but we agree as to what the facts are.

By Mr. McConnell: Well, I don't agree as to what the facts are because, with all due deference to your Honor, and I am not saying your Honor can't rule on this — you can rule any way you want to rule, and I am assuming, and I certainly grant your right to make a ruling and your integrity in making it. There is no question about that in this record from my point of view.

My problem is, as a lawyer, in trying to meet that situation. My problem is this, that I don't want to be faced in the upper court with a view that you said in the lower court that on this issue, which the judge carved out, of public injury, that conspiracy was competent evidence to show public injury.

347 By the Court: I can't be any more specific in my ruling for the Court of Appeals or for this court or for counsel.

By Mr. McConnell: You have ruled it out all right.

By the Court: Yes, sir.

By Mr. McConnell: But the Court of Appeals could say, "What was it? Did you have any evidence of conspiracy? We are not going to decide these things in a vacuum up here."

By the Court: Regardless of how much you have, the Court says you can't introduce it at this time. I can't be more specific than that. You can do it when the jury brings in a verdict.

By Mr. McConnell: All right. Can we do this — This is just a suggestion which your Honor can do with as you please.

Outside the presence of the jury, so the jury doesn't even have to come back, can we make an oral statement to your Honor for the record of what we would prove if we were able to call these witnesses on the issue of public injury, but offering proof of conspiracy? Can we do that for the record so that nobody is prejudiced?

Now, Judge Thompson made a very peculiar state-
348 ment. He said that they would be prejudiced in the court above by prima facie proof of conspiracy.

No, they are not prejudiced above by that because, if your Honor is right, all of that evidence is irrelevant. It hasn't anything to do with the issue, if your Honor is right, and the upper court wouldn't consider it. But if your Honor is wrong, the next thing Judge Thompson is going to say is, "Well, he hasn't offered any proof of conspiracy. There isn't anything in this record to show that he ever had a lawsuit, and you are not dealing with cases up here as academic propositions. The man has to show that he is injured or offer to show it."

That is my problem.

By the Court: I also disagree with Judge Thompson's conclusion that if you do make an offer of proof on any phase of it, that he is estopped or denied any privilege or hampered in the protection of his clients' rights.

At first he said, and I agreed with him originally, that he could offer a counter offer of proof to protect his record or, even if he didn't, and I denied your offer of proof, I mean sustained the objection to the offer of proof, no Court of Appeals and no Supreme Court would deny the defendants a right to have their day in court.

349 By Mr. McConnell: Certainly.

By the Court: There is no theory of law that I can follow and—

By Mr. McConnell: Why don't we stop making—we all know what we want to do here. Why don't you let us get up before your Honor, let the jury out of this entirely? We will make an offer of proof to your Honor, and you are going to overrule it. Then submit the issue, and that is it.

By Mr. Meserow: On what? Public injury alone?

By Mr. Owens: I object if the oral offer of proof gets into these elements of conspiracy. I think he should confine it to that issue of public injury, just as he would if he were presenting it in the manner in which he is proceeding at this time. I think he has to conform to your Honor's ruling in that respect, and as soon as he departs from it, he is outside the issue as you have defined it.

By Mr. McConnell: No, I am offering it on the issue of public injury, and I am making my record on that.

By the Court: I will let you proceed with your offer of proof on public injury.

Proceed.

By Mr. McConnell: Mr. Freeman will make it.

By Mr. Thompson: I am certainly going to object
350 to any long recital of one of these horrendous tales that we have heard a half a dozen times in this lawsuit.

By the Court: That is right.

351 By Mr. Thompson: That is what we are going to have now, and I am against it, and the rules of the court are very definite on this subject.

By the Court: I just glanced through them myself, and I thought I was following them. What rule do you have in mind, Judge Thompson?

By Mr. Thompson: I am talking now about Rule 43 on the admissibility of proof.

By the Court: Yes, I checked it, too.

By Mr. Thompson: Well, as far as that is concerned, the law is as clear as daylight, it seems to me.

By the Court: The law is that it is discretionary with the court in the main, and there is one citation there that struck me peculiarly, where it holds that when the offer of proof is obviously — I forget the word they used, but meaning improper, and to accomplish a purpose which

has no place in the litigation, the Court ought not to permit it.

By Mr. Owens: I think that is —

By the Court: But when counsel addresses himself to the question of public injury and tells the Court, and I have confidence in all counsel, that he is trying to make an offer of proof to establish public injury, I do not propose to split hairs with him or to bar him from
352 making the offer to protect his record. That would be a denial of a fixed right that I don't want to violate.

By Mr. Owens: Your Honor, are you departing from your previous decision that he could not get into the question of conspiracy?

By the Court: Counsel, I have ruled on that. He can not go into it, and I will exclude it after he gets through making the offer.

By Mr. Freeman: We have a right to make a statement, and the cases are clear —

By the Court: You can make your offer on the record.

By Mr. Freeman: I will try to be as brief as possible —

By the Court: Make it as succinctly and as —

By Mr. Freeman: Factual.

By the Court: (Continuing) — factual as you can so we are not going to spend four or five weeks doing it. We could do it if we did it the other way. Everything that you have got to offer in your offer of proof is in the pleadings and briefs. I have read them, heard them, and in your depositions. So let's not go into that situation, but proceed with your offer of proof.

By Mr. Owens: I would like the record to show an objection on behalf of the defendant Hugh W. Cross to this proceeding.

353 By Mr. Meserow: I would like the record to show objection on behalf of my client —

By the Court: The record may show the objection of all defendants to this offer of proof. I am not deviating from my original ruling that I am not permitting any evidence or offer of proof to establish anything beyond the question of public injury, but I am respecting counsel's judgment, and he may address his proof to that issue.

By Mr. Keating: Further let the record show the objection of the New York Central to the offer of proof by counsel on the ground that there is no witness on the stand to which the offer of proof is directed, and actually the offer is directed to the Court of Appeals rather than the jury.

By Mr. Owens: I join in that.

By the Court: Any offer of proof is generally not addressed with any witness on the stand.

By Mr. Meserow: It must be according to Rule 43. There must be a witness on the stand, objection made, and then an offer of proof.

By the Court: There is one. The objections have been made. I have ruled on those. I have sustained the objections to some of the questions, and now we are taking a shortcut.

354 By Mr. Freeman: I am assuming, your Honor, that similar questions addressed to this witness and to other witnesses would be similarly objected to and ruled upon.

By the Court: And sustained.

By Mr. Freeman: I am making an offer of proof to that line of questions and that line of objections.

By the Court: I think I have been clear, and I am speaking frankly and freely. Anything that has to do with any alleged conspiracy, any dealings with any third persons, prior to the consummation of the contract, except

as pertain to public injury, are inadmissible and improper and the objection sustained and will be sustained.

355 By Mr. Freeman: When I finish my offer, they will make their objections.

By Mr. Meserow: We will make objections when you are making it, if you are going to deviate.

By Mr. Thompson: We are not going to wait until he finishes the offer. We are not going to sit still for a moment and have an offer of proof made that is not directed to a question pending before a witness who is on the stand because that is exactly what the rule says, and we will undertake to try this according to the rules.

By Mr. Freeman: I am trying to follow your instructions, and if they don't —

By Mr. McConnell: Wait a minute.

Judge Thompson made a statement there. The Court has refused to let me do exactly that, and I want the record to so show, and the reason we are doing this is because we can't do it the way you suggested. I agree with your statement 100 per cent, that that is the way to do it. We can't do it that way so we are doing it this way.

By Mr. Thompson: There is no use chattering about it.

By Mr. Freeman: We offer to prove through the witness Charles E. Quackenbush, who was general passenger agent of the Chicago and North Western Railroad in

356 1955 during the course of this issue before this Court, that he had been employed over forty years and was responsible for the determination of the adequacy of the Chicago transfer service on behalf of the North Western Railroad —

By Mr. Thompson: Your Honor, we object to that as a conclusion of the witness. The witness couldn't testify to that if he were on the witness stand, in the first place, and in the second place, we challenge that he will so testify.

He is now in the court room. We ask to have him put on the stand to answer that question.

By Mr. Freeman: I would like to go forward. Mr. Thompson is just trying to be disruptive.

By the Court: Proceed.

By Mr. Freeman: (Continuing) That he did attend the Chicago Terminal Lines' meetings and participated on various investigating committees; that the committees that were established by the Chicago Terminal Lines to investigate various Chicago transfer problems usually consisted of the railroads from each one of the six terminals involved in Chicago; namely, the North Western, covering the North Western terminal; the Pennsylvania, covering the Union Station; the Santa Fe, covering the Dearborn Station; Baltimore and Ohio, covering the
357 Grand Central Station; Illinois Central, covering the Central Station, and the New York Central, the La Salle Street Station.

In 1955, the Chicago North Western was the second largest transfer user with 17 per cent of the total.

Mr. Quackenbush would further testify that in 1955 and for years prior the Chicago North Western was satisfied with the Parmelee service; that the dealings—

By Mr. Thompson: I object to that as stating a conclusion of the witness which is immaterial, certainly to the issue before the Court, and we object to having any such offer made in the record.

By Mr. Freeman: (Continuing) That his dealings with Parmelee were straightforward and that problems that he presented were resolved promptly; that Parmelee had handled the station transfer service for over 100 years without a written contract, and to the witness' knowledge there was never a violation of any commitment undertaken by Parmelee.

358 By Mr. Thompson: I object to that again, your Honor, as a violation of the rules. The witness could

not so testify if he were on the witness stand, and he wouldn't so testify if he were there. We challenge the facts and we challenge the good faith of the statement, and we ask your Honor to rule on these objections.

By Mr. Freeman: He has so testified.

By the Court: The objection will be sustained.

By Mr. Keating: Your Honor, we can stand and make objections, but Mr. Freeman is going to keep on with the large manuscript he is reading into the record.

By the Court: I think if you will make a general objection to the entire reading of the statement—

By Mr. Thompson: We do make such an objection.

By the Court: And it will stand as an objection to everything he says, and I will rule at the conclusion. Everything that he says that he offers, and let the record show, the defendants object to it is incapable of proof, improper, and because the witness is not on the stand and wouldn't so testify, and because the witness is in court ready to take the stand and testify directly rather than from an offer of proof.

By Mr. Freeman: Your Honor, you are now at-
359 tacking the method.

By the Court: No; I am merely saying that the objection shows to your reading it on those bases, and then I will dispose of it when I get to it.

By Mr. Freeman: We would be glad—

By Mr. Meserow: The damage is done. The Court of Appeals will read his statement, which we have no opportunity to rebut. I think we should be able to make specific objections to these erroneous statements.

By Mr. Keating: They should be stricken.

By the Court: You can make specific objections.

By Mr. Freeman: You asked them to withold their objections.

By the Court: If they don't want to, they may do otherwise.

By Mr. Thompson: My objection is to making an offer of proof in this fashion at all, and I stand by that objection, and I am not objecting to these little tidbits as we go along. I do object to having it in the record in this fashion. We can't meet it.

It will be there. It can't be erased, and this is contrary to any rule that I ever heard of, of making an offer of proof, and I object to the form of making the offer
360 of proof, and I challenge the right to do it.

By Mr. Keating: Objection by the New York Central.

By Mr. Freeman: Your Honor, we should have an opportunity to make a fair statement of the excluded evidence. You have indicated what you intend to exclude, and you have indicated that I should have that opportunity.

By the Court: Proceed.

By Mr. Freeman: Mr. Quackenbush would further testify that all requests made on Parmelee for information were complied with.

By Mr. Thompson: We object to that, and ask that the witness who is in the courtroom be put on the stand to so testify. This is not even a good faith offer of proof. It isn't an offer of proof by any form. It is a speech.

By Mr. Freeman: It is the testimony, his deposition.

By Mr. Thompson: I want a ruling, if the Court please.

By the Court: Sustained.

By Mr. Freeman: That Mr. Quackenbush was appointed as one of a number of six railroads on a committee on January 29, 1954, organized primarily for the purpose of determining whether the cost to the railroads of the transfer service could be reduced.

361 A statement was prepared by that committee and transmitted to prospective bidders. Mr. Quackenbush

would identify a document that we have procured from the Chicago Terminal files and coded as A-669 to A-672, as a statement prepared on or about July 21, 1954, and circulated to prospective bidders.

In this statement the committee states:

> "That we would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company and they feel that the services of each has contributed to the success of the other. Notwithstanding, the economic conditions are such that the railroads must not undertake to pay a greater free for the services performed than is necessary."

362 This statement prepared by the committee, Mr. Quackenbush would so testify, was submitted to the various people who were solicited for a bid.

Mr. Quackenbush would further testify that any increase in the cost to the North Western Railroad, either in the amount of the transfer coupon or in the cost of performing collateral work by the railroad for the transfer company would be of vital concern to his railroad; that on May 19 the committee had a meeting in order to consider the respective bids of both Mr. Keeshin and Mr. — and the Parmelee company, that Mr. Brennan who was general passenger manager of the Chicago North Western Railroad for the first time in his history with the railroad attended this committee meeting, that he attended it because Mr. Quackenbush had been called by Mr. Bone of the New York Central on or about April 28 and requested to have his top passenger executives present at the next committee meeting, because there had been intervention with certain railroad presidents by Mr. Cross, and it was because of that request —

By Mr. Thompson: Objection.

By Mr. Freeman: —that Quackenbush invited Brennan to this meeting.

By Mr. Thompson: Objection.

363 By Mr. Keating: There has been an objection, Mr. Freeman.

By Mr. Freeman: I wanted to finish my sentence.

By the Court: The objection is sustained.

By Mr. Owens: And I would request your Honor to direct Mr. Freeman not to read material of that type into the record.

By the Court: Yes; anything of that nature directly on the conspiracy is ordered stricken and will not be received by this Court, and I ask counsel not to address himself to that conspiracy.

By Mr. Freeman: Your Honor, that is part of our proof of public injury, and we propose to make such an offer of proof, and that is the only reason I am standing here.

By the Court: Proceed.

By Mr. Freeman: That Mr. Quackenbush was interviewed in the morning by the committee, that Mr. Markin of Parmelee was interviewed in the afternoon, their respective proposals analyzed by the committee, and at the conclusion of the meeting Mr. Quackenbush would testify it was decided to have another meeting on June 3rd, so the committee members could report back to their executives in the railroads for instructions; that as a mat-

364 ter of normal routine and regular practice, Mr. Quackenbush, on behalf of the North Western, prepared memoranda of occurrences at these committee meeting for his superior, Mr. Brennan, that his was the normal practice with respect to the other committee members. That is was necessary to have these memoranda prepared, because the railroad officials are constantly in mo-

tion; that a memorandum was prepared after the May 19th meeting by Mr. Quackenbush in consultation with his assistant, Mr. Stewart, and with his superior, Mr. Brennan.

365 That this memorandum consisted of four pages and was coded as North Western 70 to 74, and is dated May 23rd, 1955, signed by Mr. J. R. Brennan and addressed to the Vice President of Traffic, Mr. R. O. Small.

By Mr. Thompson: We object to any reference to any such thing. It has nothing to do with whether the public was injured or not injured, and this thing is still going on.

By the Court: The objection will be sustained.

By Mr. Thompson: The Court has heard this horrendous speech a half dozen times. This is not an offer of proof, and it is getting into the record, and there is no way I know of —

By the Court: It has been in the record for a long time. It is in the record now. It is in the pleadings, and the Court sustains it and excludes it.

By Mr. Thompson: I move that all that he has read so far be excluded as an improper way to make an offer of proof, and that it be stricken out of the record.

By the Court: I will reserve my ruling. I sustain the objection,, however, and strike it from the record.

By Mr. Freeman: That I would offer through Mr.
366 Quackenbush as Parmelee Exhibit No. 1, this memorandum of July 21, 1954, and the covering transmittal letter of July 22, 1954.

By Mr. Owens: That is objected to, the admissibility of those documents.

By the Court: Objection sustained.

By Mr. Freeman: That I would offer through Mr. Quackenbush, who would identify this memorandum on May 23, 1955, as having been prepared by him, as Parmelee Exhibit No. 2.

By Mr. Owens: I object to this proceeding, your Honor. He is still directing his testimony to this statement, to this document which has been objected to. I think your Honor should direct him not to proceed with it.

By Mr. Freeman: I think your Honor has made —

By Mr. Owens: Your Honor, he is making a farce to this proceeding.

By the Court: The objection is sustained. Proceed.

By Mr. Freeeman: That by this memorandum Mr. Quackenbush made a comparison of the proposal of Keeshin and the proposal of the Parmelee Company and pointed out that Keeshin rates could go to $1.25 in the fourth year and $1.27 in the fifth year of service, and
367 that there was no guarantee by Keeshin of the amount of the rates for service in the fourth and fifth years. In contrast, Mr. Quackenbush pointed out that the Parmelee proposed a maximum ceiling for each year of the six and a half years of service, with the fourth year being lower than Keeshin's at $1.24, and the fifth and sixth years being lower than Keeshin at $1.25.

Mr. Quackenbush further pointed out that the Keeshin proposal estimated that they would require $500,000 to furnish all facilities and equipment, and Parmelee had likewise estimated that it would require $500,000 to purchase new equipment and proposed to do so over a period of six months to one year.

The memorandum was prepared, and Mr. Quackenbush recommended that Parmelee, that the railroads vote for Parmelee and continue Parmelee on May 23rd, 1955.

Mr. Quackenbush would further testify that he was furnished a memorandum by Mr. Brennan of a telephone conversation between Hugh Cross and —

By Mr. Meserow: Objection.

By Mr. Freeman: I have not finished my sentence.

By the Court: The objection is sustained. Between whom?

368 By Mr. Freeman: By Mr. Hugh Cross of the Interstate Commerce Commission and the president of the railroad, Mr. Paul Feucht.

By the Court: Sustained. It is improper and hearsay, and it will be sustained, and you can't refer to it. It has to be proper evidence.

By Mr. Freeman: All right; I will put it in through Mr. Feucht.

Further, that Mr. Quackenbush on June 2nd went out to take a look at the Keeshin equipment, that he would testify that he did not approve of the bus or the Volkswagon, that in addition he had opposition to the Volkswagon because it couldn't be air conditioned and because it only had exits on one side and therefore created a distinct hazard to the safety of passengers; that Mr. Quackenbush opposed the use of the Volkswagons on the surface, but Mr. Keeshin nevertheless put them into service on October 1st and then abandoned them in January, 1956.

That the station wagons he inspected he felt could do the job, but they had several drawbacks; that he was worried about the height of the vehicle in so far as head room was concerned, and Mr. Quackenbush pointed out that the Parmelee vehicle had more head room, that
369 he was also concerned about the fact that the station wagons had to be open in the back to load baggage which thus exposed the passengers to the elements.

By Mr. Owens: I object. All of this is a preliminary statement regarding a contract, which was eventually gone into.

By the Court: That may go towards public injury; I am not sure.

By Mr. Owens: Your Honor, they eventually entered into a contract. All of these preliminary negotiations would be merged in that contract.

By the Court: Not in anti-trust law.

By Mr. Thompson: Now, if the Court please, my objection is that Mr. Quackenbush is in the court room.

By the Court: I sustained that objection.

By Mr. Thompson: And the statements made are not true, and he will not so testify.

By the Court: I sustained that objection.

By Mr. Freeman: Further, Mr. Quackenbush would testify, if he were called to the stand, and his deposition also supports the fact, that the Parmelee vehicles were especially built with baggage compartments separated from the passengers.

Mr. Quackenbush did not know the position that the Chicago North Western Railroad would take on the 370 evening of June 2nd, when he was called by Smart of the Illinois Central and asked, but that on his way over the committee meeting and possibly ten minutes before the meeting, he was told by Mr. Brennan—

By Mr. Owens: Objection on behalf of the defendant Cross.

By Mr. Freeman: That he was told on behalf of Brennan, his superior, that they were going to vote for Keeshin, that he had had no discussion with Mr. Brennan during the period of May 23rd, the time of his memorandum, and June 3rd.

By the Court: Objection sustained, and it may be stricken.

By Mr. Thompson: I would move to strike all of this.

By the Court: It may be stricken.

By Mr. Freeman: In the June 3rd committee meeting, the committee voted unanimously for Keeshin, with Mr. Whittington of the B&O making the motion, and then they called Keeshin in to clear up the certain issues.

One issue discussed with Keeshin was the rate that he would charge for the fourth and the fifth year, and they sought to get from Mr. Keeshin a maximum ceiling, but he refused to provide them with a maximum ceiling, and so in consequence, Mr. Quackenbush pointed out that Keeshin's rate could go and actually did go higher than the Parmelee proposal.

371 Mr. Quackenbush further says at that time it was essential in order to assure good service, that the contract with Keeshin have a termination clause, that such a termination clause was proposed by the railroads in their draft of contract, that it was eliminated upon Mr. Keeshin's urging, that at this June 3rd meeting, Mr. Quackenbush would testify that it was not decided as to how the baggage would be handled for the passengers, either the baggage accompanying the passengers or the baggage that was checked through and went separately from the passengers.

That the matter of baggage handling was of primary consequence to the conduct of the Chicago Transfer Service, and yet, the committee had not, on June 3rd, determined whether or not the accompanying baggage was to be handled either in the back of the station wagon or on top of the station wagon and had not determined whether the checked-through baggage was to be loaded or unloaded on the railroad docks by railroad employees or by company employees, by Keeshin's company employees.

That the matter of loading and unloading baggage was of substantial cost to the railroads and resulted in an 372 acrimonious dispute between the Chicago and North Western and the Keeshin Company when the services were commenced.

By Mr. Thompson: I object to that. No part of this can be sustained. Mr. Quackenbush will testify to no part of it, and we challenge the good faith of the offer.

By The Court: Objection sustained.

By Mr. Thompson: We object to—

By Mr. Freeman: He sustained it already. You are talking after the ruling, Mr. Thompson.

By Mr. Thompson: If you don't quit running off at the mouth, we will give you some remedy for diarrhea pretty soon.

By Mr. McConnell: I object to those statements, Counsel.

By The Court: Let's not get into personalities.

By Mr. Thompson: My next motion is to strike from the record all that has been read so far.

By The Court: The objection is sustained, and it may be stricken. Proceed.

By Mr. Freeman: Your Honor, I do want to take personal offense to Mr. Thompson's remarks, both to me and the insult to this Court.

By The Court: I ask all counsel to refrain from any personalities. This is a very serious and important
373 lawsuit, and we are trying to hold it in the highest tradition of the court.

By Mr. Freeman: I will be glad to stop at any end of a sentence.

By The Court: Proceed, please.

By Mr. Freeman: I would offer to prove from Mr. Paul E. Feucht, president of the Chicago and North Western Railroad in 1955, that he was interested in the transfer negotiations in 1955 in order to secure a cheaper transfer rate, and that was his only interest.

By Mr. Thompson: If the Court please—

By Mr. Freeman: That he was—

By Mr. Thompson: Just a minute. You are at your period now. I waited until you got to your period.

If the Court please, I object to any offer of proof as to what Mr. Feucht would testify to.

374 He is in the court room. He was here to testify. He has come from Washington at their request to testify, and if they want to hear his testimony or if the Court wants to hear it, let them put him on the stand, and swear him and take his testimony.

By Mr. Freeman: We will put him on. If that is the way they want it, we will put him on. He is here, and we will put him on before the jury.

By The Court: Very well; bring out the jury.

Wait a minute. Before we do that, is yours along the same line of testimony?

By Mr. Freeman: Yes, more so. Mr. Feucht is a very important witness in this entire problem.

By Th Court: Is he going to testify directly?

By Mr. Freeman: He is going to testify directly that Mr. Cross told him that he was very much interested in seeing that Keeshin get the contract and told him a lot of other things.

By The Court: That will be absolutely inadmissible, improper, irrelevant to this issue before me now. I think you had better make your offer of proof, and I will sustain the objection.

By Mr. Freeman: All right. I assume there is an objection running to this entire line?

By The Court: There is one made.

375 By Mr. Thompson: There is an objection running to anything when Mr. Feucht isn't on the stand and questions put to him.

By Mr. Freeman: I am abiding by the Court's suggestion that I proceed with my offer of proof rather than call Mr. Feucht.

By Mr. McConnell: Wait a minute. The objection was made not to the content, what the offer would be. The objection was made that Mr. Feucht was here in the court room, and I want the record to be perfectly clear that we accede to that position.

By The Court: I will sustain the objection. I am taking you at your word that he is going to offer testimony about conversations with Mr. Cross, and I will sustain the objection to it and not permit him to testify to conspiracy, and you may make your offer of proof.

By Mr. McConnell: We offered to call him, and your Honor doesn't permit it.

By The Court: No. You can call him and put him on the stand if you insist upon it. I am not going to deny you the right. I am going to sustain the objection to any such testimony, and I will not permit any element of conspiracy.

By Mr. McConnell: Call him.

By The Court: Bring out the jury.

376 (And thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By Mr. McConnell: We don't need to call the jury. We are making this offer of proof outside.

By The Court: Wait a minute. You are making your record. You want to call a witness, and you say the Court is denying you the right, and I am not denying the right. I will rule before the jury. Both sides are technical.

By Mr. Freeman: We are not technical.

By The Court: I am not saying it critically. I am saying it with all due propriety, and I have to watch the record.

By Mr. McConnell: Well, I don't see the point of bringing the jury back, because we are making an offer of proof, and that is all. That is all we are doing, your Honor, is making an offer of proof which we want to make outside the presence of the jury. That was understood at the beginning that all offers of proof—

By The Court: Basically, you have a right to call a witness before the jury on the issue that I have circumvented.

377 PAUL E. FEUCHT, called as a witness herein, for adverse examination by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name?

A. Paul E. Feucht.

Q. And your address, sir?

A. My present address?

Q. Your present address, yes.

A. 4226 Columbia Pike, Arlington, Virginia.

Q. And your present occupation?

A. Deputy Assistant secretary of the Army, Logistics.

378 Q. What was your position in 1955?

A. President of the Chicago and North Western Railway Company.

Q. How long had you held that position?

A. Since January, 1953.

Q. During 1955 had you any interest in the negotiations that were then being conducted by a committee of the Chicago Terminal Lines for the Chicago transfer situation?

A. By interest you mean did I participate in any of the negotiations?

Q. No. I mean were there any reports made to you, and did you discuss it with your subordinates?

A. Well, reports were made to me from time to time orally, and whenever I had staff meetings. I had staff meetings about once a week, and then in between certain people would come in and talk to me about them.

Q. Mr. Feucht, you are a defendant in this case, are you not?

A. I am.

By Mr. Freeman: And we do examine him, your Honor, as an adverse witness.

379 By The Court: All right; you have a right.

By Mr. Freeman:

Q. Is it true you were primarily interested in the transfer negotiations in 1955, to secure a cheaper transfer rate, if possible?

By Mr. Thompson: If the Court please, that is immaterial to any issue in this case.

By The Court: Overruled; he may answer.

By The Witness:

A. I was.

By Mr. Freeman:

Q. Mr. Feucht, were you a former director of the Willett Motor Truck Line?

By Mr. Thompson: We object as immaterial.

By The Court: Objection sustained.

By Mr. Freeman: I will make an offer of proof, but let me go through with those questions I can ask this witness now as that might save time.

By The Court: All right.

By Mr. Freeman:

Q. Mr. Feucht, were you called by Mr. Cross on or about May 13, long distance?

380 By Mr. Thompson: Objection.

By The Court: The objection to that will be sustained and the witness need not answer.

By Mr. Freeman:

Q. Mr. Feucht, did Mr. Cross call you and tell you he was very much interested in seeing that Keeshin got the transfer contract?

By Mr. Thompson: Objection.

By The Court: Sustained, and he need not answer.

By Mr. Freeman:

Q. Mr. Feucht, did you receive a telegram from Mr. Cross on May 25 advising you that he was coming to Chicago and wanted to see you?

By Mr. Thompson: Objection.

By The Court: Same ruling, in any dealing with Mr. Cross by this witness except as pertaining to the public injury on the question of rates and service.

By Mr. Freeman:

Q. Mr. Feucht, I want to show you a memorandum dated May 13, 1955, which bears the initials P.E.F., and ask you whether or not that was prepared by you.

381 A. It was.

Q. I want to show you a telegram dated May 25, 1955, addressed to you, and ask you whether you received this telegram, and whether it came to your attention.

A. I received the telegram, and it came to my attention.

By Mr. Freeman: May I mark as Plaintiff's Exhibit No. 3, this memorandum of May 13, and as Plaintiff's Exhibit No. 4 for identification, this telegram?

By The Court: They may be so marked.

(Thereupon said documents were marked Plaintiff's Exhibits 3 and 4 for identification.)

By Mr. Freeman:

Q. Mr. Feucht, do you recall receiving a memorandum from Mr. R. O. Small addressed to you on May 27, 1955, with respect to the Chicago Transfer situation, and is that the memorandum you received?

A. This doesn't have the statement attached.

382 Q. You mean these two additional papers?

A. Yes, this is the one.

Q. Then did you receive, Mr. Feucht, from Mr. Small, this three-page memorandum dated May 27, 1955?

A. I did.

Q. And did Mr. Small say to you that it was the view of the passenger people—

By Mr. Thompson: Now we object to that. You know better than that. We object to his reading from a document not yet offered in evidence.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibits 3 and 4, and I will ask to have this marked as Plaintiff's Exhibit 5 and I offer it in evidence.

(Thereupon said document was marked Plaintiff's Exhibit No. 5 for identification.)

By The Court: All right.

By Mr. Freeman: I have offered in evidence Plaintiff's Exhibits 3, 4 and 5, identified by this witness.

By The Court: I have Exhibit 5 before me. I haven't got the others.

383 By Mr. Freeman: Excuse me, your Honor.

By The Court: All right. First, on the question of Exhibit 5, which is the letter, I see no objection to that, but I will hear you if you have any.

By Mr. Thompson: We object to this document on behalf of all of the railroads other than North Western, and on behalf of all of the individual defendants other than Mr. Feucht—

By The Court: That is a valid objection.

By Mr. Thompson: That they are in no wise identified with this, had no knowledge of it before or after.

By The Court: That is a valid objection. It will be received only as to the writer.

On these two, I will sustain the objection and exclude them because they pertain to what I have already ruled on.

By Mr. Thompson: The ones to which your Honor is now referring are Plaintiff's Exhibits 3 and 4?

By The Court: Those are Exhibits 3 and 4. Call them by name. It is the Hugh Cross telegram and Cross references, and they are excluded.

384 (The said document heretofore marked Plaintiff's Exhibit 5 for identification was received in evidence.)

By Mr. Freeman: I will say with respect to Exhibit 5 that we do charge a conpiracy, and the statements made by one of the conspirators in the course of a conspiracy is admissible.

By The Court: I have definitely ruled that conspiracy has no place here, and it is not going in.

By Mr. Freeman: I just want to make my record.

By The Court: I am merely defining the issue again.

By Mr. McConnell: Do you want to identify them for the record?

By Mr. Freeman: Yes, I do. I now want to identify them—

By The Court: They have been marked.

By Mr. Freeman: Exhibit 3 as your Honor indicated, should be identified—

By Mr. Thompson: It is identified. It speaks for itself.

By Mr. Owens: Objection.

By Mr. Meserow: Objection.

By The Court: Exhibits 3 and 4 are excluded.

385 By Mr. Thompson: It speaks for itself. I object to your reading any part of it.

By The Court: The objection is sustained. I only admitted Exhibit 5.

By Mr. Freeman: We will make an offer of proof of all of this, but I just want to get through with this witness so the jury doesn't have to go in and out.

By The Court: That is all right.

By Mr. Freeman:

Q. Mr. Feucht, you did testify that you received this document that has been marked Plaintiff's Exhibit 5?

A. Which one is that now?

Q. The memorandum of May 27.

A. I did.

Q. Is it true that on May 27, you were advised by your vice-president in charge of traffic that "It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads, that Parmelee should be awarded the contract because of their years of experience, their financial integrity,

386 and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract."?

By Mr. Thompson: We object—

Q. Was that the advice you received?

By Mr. Thompson: We object to the hearsay character.

By The Court: Objection sustained as to all the others except the one who wrote the letter.

By Mr. Freeman: I am only asking if he was so advised.

By The Court: He said he received it.

By Mr. Freeman:

Q. Were you so advised?

By Mr. Thompson: The document speaks for itself.

By Mr. Freeman: May I get an answer?

By The Court: He may answer.

By The Witness: Answer to what now?

By The Court: Were you so advised.

By The Witness: Advised as to what?

By The Court: The last paragraph in that exhibit. Let him read it.

387 By Mr. Thompson: The question should be did he read the exhibit, and not whether he was advised about anything.

By Mr. McConnell: Oh, I object to your advice and counsel here. Let our counsel proceed with this.

By the Witness:

A. I received this.

By Mr. Freeman:

Q. And were you so advised by Mr. Small?

A. Separately from this exhibit?

Q. No, by this exhibit.

By the Court: Objection sustained. He received it.

By Mr. Freeman:

Q. Was it the intent of these memoranda that were transmitted to you to advise you of the position taken by your passenger people?

By the Court: Objection sustained.

By Mr. Freeman: There was no objection.

By the Court: Whose intent? Oh, yes, they rose.

By Mr. Freeman: Did they rise?

By the Court: Oh, yes.

388 I want to explain to the jury there is nothing mysterious about what we are discussing here. The Court has limited the issue to one question, whether or not there is public injury, and all I am trying to do here, and I don't want you to be mystified by it or counsel's objections. Each one is protecting their respective interest properly, and there is no objection to that.

But I want the jury to know what is behind it. I am trying to exclude from the jury anything except that one issue. Is that clear? So please don't be confused about it.

By Mr. McConnell: As long as you are telling the jury that, I think you might also tell them that you have ruled that on that particular issue of public injury, you are not going to permit any evidence of conspiracy.

By the Court: I am not going to permit any of the conspiracy on this immediate issue.

389 By Mr. McConnell: That is what I am talking about, on this issue.

By the Court: I am going to reserve it until it is disposed of. The record so shows, and I have said it ten times. I think I have told the jury that.

By Mr. Freeman: I would just like to complete my questions to Mr. Feucht. I know that they will be subject to objections and your Honor's rulings.

By Mr. Freeman:

Q. Mr. Feucht, did you advise Mr. Morehouse that Mr. Cross was at the Union League Club during the period from June 1st to June 3rd of 1955?

By Mr. Thompson: I object to that.

By Mr. Meserow: Objection.

By the Court: I sustain the objection.

By Mr. Freeman:

Q. Did Mr. Morehouse go up to see Mr. Cross pursuant to your suggestions?

By the Court: Objection sustained.

By Mr. Freeman:

Q. Who was Mr. Nye Morehouse with the Chicago and North Western Railway, Mr. Feucht?

390 Maybe I can get that question answered. Can you answer that?

A. At that particular time Mr. Nye Morehouse was, as I recall, retired as vice president and general counsel, and he was on a special job dealing with rates between the Eastern and Western railroads.

Q. Wasn't he involved with rates generally, with several of the rate cases then pending before the Interstate Commerce Commission?

By Mr. Thompson: I object.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Was Mr. Morehouse engaged with respect to the determination of the class rates in the mountain territory?

By Mr. Meserow: Objection.

By Mr. Thompson: Object to the question.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Feucht, in 1955 were there more matters which the Chicago North Western Railroad had pending before the Interstate Commerce Commission?

By Mr. Thompson: I object as immaterial. The 391 Court has already ruled on that before trial.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Feucht, did Mr. Morehouse report back to you on his conference with Mr. Cross on June 2nd?

By Mr. Thompson: I object to that, assuming that there was a conference.

By Mr. Owens: Objection on behalf of Mr. Cross.

By the Court: I sustain the objections.

By Mr. Freeman:

Q. Do you know whether or not the Willett Company withdrew from the negotiations for the Chicago transfer contract?

By Mr. Thompson: I object to that as immaterial.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Do you know whether or not, Mr. Feucht, the Willett Company was rejected as a proposed bidder because their rate was identical with the rate that Parmelee was then charging?

By Mr. Meserow: Objection.

By the Court: Objection sustained.

392 By Mr. Freeman:

Q. Do you know what kind of company the Willett Company is with respect to its experience in the field of passenger traffic?

By the Court: Objection sustained. I am ruling and have ruled and will continue to rule that the Willett connection with this case has nothing to do with it and is not admissible.

By Mr. Freeman:

Q. Mr. Feucht, did you instruct your passenger people to vote for Keeshin on the evening of June 2nd?

A. I did not.

Q. What was the discussion that occurred on the evening of June 2nd with respect to the Chicago Transfer Service in which you participated?

By Mr. Thompson: I object to that.

By Mr. Owens: Objection.

By Mr. Thompson: It is hearsay as to everybody except Mr. Feucht and somebody else in the first place, and it is also immaterial.

By the Court: He may state who was present, where it was.

393 By Mr. Freeman: All right.

By Mr. Freeman:

Q. Let me ask you, then, did you have a meeting with Mr. Brennan late in the afternoon of June 2nd in your office?

A. I am not sure whether it was on June 2nd or the day following, but regardless of what day it was, I did have a meeting with Mr. Brennan in my office, late on Sunday in that particular area.

Q. Was this meeting prior to the time of the committee meeting at which the North Western's vote was cast for the Transfer Service?

A. That I don't recall. I don't recall.

Q. Was there anyone else present at this meeting with you, Mr. Feucht?

A. That I don't recall.

Q. Can you tell us what happened at this meeting?

By Mr. Thompson: We object to that; hearsay as to everybody except Mr. Feucht and is immaterial.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Did you review the memorandum with Mr. Brennan that had been prepared by Mr. Small and identified 394 here as Plaintiff's Exhibit 5?

A. I believe I did, but I am not positive. In the normal course of business, I would probably review it.

Q. Did you review that memorandum in detail with Mr. Brennan that late evening?

A. Not that I recall.

Q. Didn't you previously testify under oath in response to a deposition—did you previously testify in a deposition in this case?

A. I did.

Q. Didn't you previously testify as follows:

"Q. Had you reviewed that memorandum before you spoke to Mr. Brennan on June 2nd?

"A. I probably did. In fact, I would say that I went over it in detail with him."

Now, is that correct?

A. I practically said the same thing here.

Q. What do you say now, that you did review this memorandum in detail with Mr. Brennan?

A. I said I assumed that I probably did, but I don't recall definitely.

Q. Did you recall better then, Mr. Feucht?

395 A. Not necessarily.

Q. Did you decide with Mr. Brennan at that meeting to vote for Keeshin?

A. Did I decide?

Q. With Mr. Brennan at that meeting?

A. I did not. Mr. Brennan made the decision.

Q. On what basis did he decide for Keeshin?

By Mr. Thompson: I object to that as calling for mental operations.

By Mr. Meserow: Objection.

By Mr. Owens: Objection.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Do you recall whether or not Mr. Brennan advised you that the Keeshin proposed rate was the lower rate of the two?

By Mr. Thompson: We object to that as immaterial.

By the Court: He may answer if he so recalls.

By the Witness:

A. As I recall it, he did tell me that the rate was lower.

By Mr. Freeman:

Q. And was that the basis upon which the decision
396 was made?

By Mr. Thompson: Objection.

By the Court: Objection sustained.

By Mr. Freeman: All of this I will make as a matter of offer of proof.

By the Court: I presume so.

By Mr. Freeman:

Q. Mr. Feucht, was the Chicago North Western Railroad at that time interested in what was generally known as the coal roll-back case involving an increase of 35 cents per ton of coal going into the Wisconsin and Michigan area from—

By Mr. Meserow: Objection, your Honor.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Did the North Western Railroad handle approximately seven million tons of coal a year into the Wisconsin and Michigan areas?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Thompson: This has all been ruled before trial by Judge Sullivan and by yourself, and I don't want the questions even asked.

397 By the Court: The objection is sustained.

By Mr. Thompson: The Court has ruled that it is improper.

By the Court: All I can do is sustain an objection, Judge Thompson.

By Mr. Owens: You can instruct him, your Honor, not to get into the province of these things which have already

been ruled on, and hold him in contempt if he persists in doing so.

398 By Mr. Freeman: I would like to make an offer of proof.

By the Court: Will you discharge the jury then?

By Mr. Thompson: Are you through with the witness?

By Mr. Freeman: You may step down.

By Mr. Thompson: Is he excused?

By Mr. Freeman: Yes, Mr. Feucht, I am through with you if Mr. Thompson has nothing further.

Actually, your Honor, I have not been able to interrogate this witness, and my offer of proof will cover the area of questions that have been precluded.

By the Court: You and I understand each other very well.

By Mr. Freeman: We understand.

By Mr. Thompson: We want Mr. Feucht to remain, of course, while the offer is being made because we may want to challenge it. Otherwise, you may step down. You don't have to sit there, if that is agreeable to the Court.

(Witness excused.)

399 By the Court: All right.

I will let you ladies and gentlemen go to lunch. I hope you enjoy it. Don't discuss the case with anyone, and return at 2:00 o'clock. We are going to discuss some legal questions.

(Whereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: Go ahead.

By Mr. Freeman: I would offer to prove through Mr. Paul E. Feucht, president of the North Western Railroad, that in 1955 he was the president and he was very much—

By Mr. Owens: Objection.

By Mr. Meserow: Just a minute.

By Mr. Owens: The jurors haven't left.

By Mr. Freeman: I would like to abide by the Judge's instructions.

By the Court: I told him to go ahead, gentlemen. Don't jump on him.

By Mr. Thompson: We just thought he would like to know that the jurors were still there. I was trying to accommodate the gentleman.

By Mr. McConnell: You slay me with that accom-
400 modation of yours.

By Mr. Meserow: Your Honor, I would like, at this time, before Mr. Freeman begins, apparently he has indicated by some of the questions of this witness that he intends to go into this conspiracy question, and I think your Honor should admonish him that you will not hear an offer of evidence on the question of conspiracy, which he will try to do and we will object to. But we do not wish to have that in the record.

By Mr. Freeman: He has a right to object and I have a right—

By the Court: I will not admonish him. I have ruled. The record is clear. I will strike anything on the conspiracy. I will not permit it to remain of record, and I want the record complete before the Court of Appeals.

By Mr. Freeman: That is all. We want to make a complete record of our offer.

Mr. Feucht was interested in 1955 in seeing that they got the cheapest transfer rate; that he was a former director of the Willett Company, which was a subsidiary of the Pennsylvania Railroad, that he was of the opinion that the Willett Company was an excellent motor
401 carrier with broad transportation experience; that Willett was dropped out of the transfer negotiations

because its rate that it proposed was the same as the Parmelee rate, and under the circumstances Mr. Feucht would testify there was no reason to change from Parmelee—

By Mr. Thompson: We challenge the good faith of this offer. Mr. Feucht is here and he did not testify to any such statement.

By the Court: I didn't permit him.

By Mr. Freeman: He testified under oath previously.

By Mr. Thompson: He did not.

By Mr. Freeman: I like this good faith challenge.

By the Court: I say it may be stricken. I did not permit him to ask the questions.

By Mr. Freeman: (Continuing) That Mr. Cross called Mr. Feucht on May 13, 1955, and told Mr. Feucht that he was very much interested in seeing that Keeshin get this transfer contract; that in addition, he asked Mr. Feucht whether or not they were suffering any commuter losses, and that in passing he inferred that perhaps one of the things that the North-Western might do would be to have a rate increase;

That Mr. Feucht answered that "We have already just had one;" that shortly after, within five to ten minutes after Mr. Cross' call, Mr. Feucht prepared a memo-
402 randum, which has been identified here as Plaintiff's Exhibit No. 3, which does not represent Mr. Feucht's opinion but is only a briefed down statement of what Cross said;

That the memorandum points out that Cross stated that he was very much interested in seeing that J. L. Keeshin got the new contract with the railroads here in Chicago to handle baggage and people between the various stations—

By Mr. Meserow: I object to all this reading about Cross and move it be stricken.

By the Court: Objection sustained. The document has been identified and it is marked, and we don't have to read it. Objection sustained.

403 By Mr. Freeman: I won't read it, but I want it in the record.

That Mr. Feucht regarded this call from Cross as unusual, and questioned its propriety; that Mr. Cross was only a casual acquaintance, and that he had never before spoken to Mr. Cross over the telephone;

That Mr. Feucht turned this memorandum over to Mr. Brennan; that either on that day or the next day, Mr. Brennan advised Mr. Feucht that rumors were floating all over Chicago that Cross was to have an executive post with Keeshin—

By Mr. Meserow: Objection, your Honor.

By the Court: Sustained. It may be stricken.

By Mr. Freeman: That on May 26th, Mr. Feucht was advised by his staff that they had received a telegram from Mr. Cross, which had been identified as Plaintiff's Exhibit 4; that Mr. Feucht advised his staff that he was going to leave for the week end, and that while Mr. Cross indicated that he would be in Chicago between May 31st and June 2nd and wanted to stop in for a talk with Mr. Feucht, that he instructed his office to call the matter of this telegram to his attention when he, Mr. Feucht, returned.

Mr. Feucht returned on June 1st at approximately
404 10:00 a.m.—

By Mr. Owens: Objection, your Honor.

By Mr. Freeman: (Continuing) And he was told that Cross had called—

By Mr. Owens: I have an objection, Mr. Freeman.

By the Court: Objection sustained.

By Mr. Owens: All of this is not material. I think he should be instructed to move on to something else that is material.

By the Court: Objection sustained.

By Mr. Freeman: I think it is very material.

He was told when Mr. Feucht returned to his office on June 1st that Mr. Cross had called and had left his number at the Union League Club;

That Mr. Feucht called the Union League Club, but did not reach Mr. Cross; that he discussed the telegram that he had received with Mr. Brennan, and he discussed the telegram with Mr. Nye F. Morehouse, his special counsel, and advised him that Mr. Cross was at the Union League Club, and asked him to contact Mr. Cross.

By Mr. Thompson: We object to this, in the first place, as not material; and, second, it is not in good faith and it isn't true, and Mr. Feucht will not so testify.

405 By the Court: Objection sustained.

By Mr. Freeman: That Mr. Morehouse met with Mr. Cross on June 2nd and reported back to Mr. Feucht, and Mr. Feucht and Mr. Brennan met late in the afternoon or in the evening of June 2nd, and decided for Keeshin because of the intervention of Cross.

By Mr. Meserow: Objection, your Honor.

By Mr. Owens: Objection.

By Mr. Meserow: How long must we be subjected to this type of offer of evidence when your Honor has ruled? It doesn't make any difference to Mr. Freeman. Your Honor has ruled there shouldn't even be an offer on conspiracy, and that is all he is talking about.

By the Court: Objection sustained. It may be stricken.

By Mr. Freeman: (Continuing) That during 1955 and during these contacts and intervention by Mr. Cross, there were pending before the Interstate Commerce Commission matters of tremendous importance to the Chicago North Western Railroad, including the establishment of class rates involving the transcontinental and mountain Pacific territories—

By Mr. Owens: Objection, your Honor.

By the Court: Objection sustained. It is stricken.

By Mr. Freeman: (Continuing) The matter of in-
406 creasing the coal rates by 35 cents a ton—

By Mr. Owens: Your Honor, objection.

By Mr. Meserow: He shouldn't be permitted to continue. I ask that he be cited for contempt for violating the order of Court if he continues. This goes to the Court of Appeals. We have no opportunity to refute these statements and accusations that he is making that are unfounded.

By Mr. Freeman: I am not making any accusations. This is the record that we ask an opportunity to prove, and I am understanding it.

By the Court: Objection sustained. Proceed.

By Mr. Freeman: That other matters were also pending before the Interstate Commerce Commission of great moment to the North Western at that time;

That the decision made for Keeshin by Mr. Feucht was a result of what happened over the twenty-four hours prior to June 3rd—

By Mr. Meserow: Objection.

By Mr. Keating: The witness has already testified he didn't make the decision. Now contrary to this, he is telling what the witness would say, and it is not correct.

By Mr. Freeman: There are certain inferences—

By Mr. Keating: Your Honor, he is making an
407 offer of proof, not stating inferences.

By the Court: Objection sustained.

408 By Mr. Freeman: I would like to call Mr. Nye Morehouse or make an offer of proof as to what he would say.

By the Court: Is he in court? If not, make your offer of proof.

By Mr. Freeman: Mr. Nye Morehouse was a vice-president and general counsel of the Chicago North Western Railroad from 1947 to 1954, but he retired on May 1, 1954 and remained as special counsel for rates and division cases.

He represented the Chicago North Western in proceedings before the Interstate Commerce Commission during 1955, including the class rates involving the transcontinental and mountain Pacific territories, division problems that arose out of those class rate cases and the increase in coal rates, the so-called coal rollback case involving shipments of coal into Wisconsin and Michigan points.

By Mr. Thompson: What has that got to do with—

By Mr. Freeman: Mr. Morehouse—

By Mr. Thompson: Please, Mr. Freeman, just a moment.

By Mr. Freeman: It identifies him and is very significant to what happened later.

By the Court: Proceed, Judge Thompson.

By Mr. Thompson: I don't know what you are
409 addressing yourself to, but anyway, I am inquiring whether or not this purports to be an offer of what Mr. Morehouse would testify to if he were here?

Mr. Morehouse is in the city. He is certainly in no sense a managing agent of this corporation. All they need to do is ask us to have him here, and we will have him here at 2:00 o'clock or a few minutes after.

By the Court: Objection sustained.

By Mr. Thompson: Mr. Morehouse is in town.

By the Court: Objection sustained to any offer of proof.

By Mr. Thompson: Do you want him at 2:00 o'clock? If you say so, he will he here.

By Mr. Freeman: Yes, I think we do.

By the Court: All right.

By Mr. Freeman: If the objection is to the form, then I would like the witness to be here.

By the Court: All right.

By Mr. Freeman: I would like to question him with respect to his meetings with Mr. Cross.

By the Court: I will sustain the objection.

By Mr. Freeman: To the form of the offer?

By the Court: No, to the fact that the witness is available.

410 By Mr. Freeman: Then I want him here.

By the Court: Yes. I am stating the objection.

By Mr. Freeman: All right.

By the Court: Proceed. What else have you got?

By Mr. Freeman: I would like to call Mr. Cross to the stand.

By the Court: I will sustain the objection.

By Mr. Keating: We haven't any jury.

By Mr. Freeman: Then I guess we will have to go to 2:00 o'clock, but I would like Mr. Cross at 2:00.

By Mr. Tone: You want Mr. Morehouse at 2:00 o'clock?

By Mr. Freeman: And Morehouse at 2:00.

By Mr. Thompson: Are there any others you want?

By Mr. Freeman: Yes.

By the Court: Mr. Cross, will you please step up here?

By Mr. Freeman: We don't have a jury, your Honor.

By the Court: Can we agree off the record that we could make that without the jury and the rulings will be the same? I am going to sustain any objection to Mr. Cross' testimony on anything that he did in this matter.

By Mr. Freeman: I think we ought to go ahead with him at 2:00 o'clock.

By the Court: This is clear in my mind. I am 411 going along with the plaintiff's right to make the offer of proof, that is all, but I am sustaining the

objection to that type of testimony and I am excluding it from the jury.

Now, if you want to be technical about it, we will have the jury at 2:00 o'clock. If you don't want to be technical, we can go through the same way, if there is no objection from either side.

By Mr. McConnell: We haven't any objection. I told your Honor that. We are trying to shorten it up.

By the Court: I am saying for the defendants, if there is no objection we will go on with him. If he testifies to anything admissible, I will have him repeat it before the jury.

I do not want the record to show that I have stopped the plaintiff from calling any witness because that would be reversible error, and it is improper, and I have no such notion.

412 By Mr. Meserow: On behalf of my defendants, I will not stipulate with the plaintiff.

By the Court: You will not?

By Mr. Meserow: No.

By the Court: All right. Two o'clock.

By Mr. Freeman: May I suggest to counsel the witnesses that I would like to call?

By Mr. Thompson: Please.

By Mr. Meserow: Your Honor, before we adjourn—

By Mr. Thompson: Let's be a little orderly. I have asked counsel what witnesses he wants, and he is trying to answer me.

By Mr. Freeman: Yes. We will want Mr. Morehouse, Mr. Cross, and then we will want Mr. Anderson, Mr. Gurley, and Mr. Duffy of the Santa Fe Railroad.

We will want Mr. Wayne Johnston, Mr. Small, and we will read the deposition of Mr. Hearne of the Illinois Central. Mr. Hearne is dead.

We will want Mr. Keeshin after. I think that will take us for a day or two. Then we will proceed with Mr. Simpson, Mr. Whittington, and Mr. Nelson after Mr. Keeshin.

By Mr. Thompson: Which ones will you want this afternoon?

By Mr. Freeman: This afternoon we will want Mr.
413 Morehouse, Mr. Cross and the Santa Fe witnesses. I think we can get them all done in one afternoon.

By the Court: Off the record. May I make a statement off the record?

By Mr. McConnell: Sure.

By Mr. Thompson: Yes, let's leave something off the record.

(Thereupon a discussion was had off the record, after which the following further proceedings were had herein:)

By the Court: Two o'clock, gentlemen.

(Thereupon a recess was taken to 2:00 o'clock, p.m., of the same day, April 26, 1960.)

414 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Tuesday, April 26, 1960,
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

415 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

416 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

By Mr. Freeman: I will call Mr. Cross, please.

By the Court: Bring in the jury. Do you want the jury?

By Mr. Freeman: Yes, your Honor.

By the Court: All right; bring out the jury.

By Mr. Thompson: I don't know why it wouldn't be all right to call each of these witnesses while the jury is here so we don't have to keep sending them in and out.

By the Court: There should be no objection to that.

By Mr. Freeman: Very well. I would just as soon do that, and we will dispense with the jury this afternoon. We will call for the witness which will keep us busy enough this afternoon.

By the Court: All right.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: All right.

By Mr. Freeman: Your Honor, I want to call several witnesses, and counsel has suggested that possibly
417 what I should do is have these witnesses called and sworn as witnesses, and just identify them, and then by reason of the questions that undoubtedly will be propounded, there will be objections, and the necessity of the offer of proof, and if we can bring forth sufficient witnesses, we possibly can occupy ourselves for the rest of the afternoon and excuse the jury.

By the Court: I think that is a very sensible and constructive suggestion, and if it meets with all the lawyers' approval, and there are no objections, I will accede to that suggestion.

By Mr. Freeman: My first witness will be Mr. Hugh Cross.

By the Court: Is there any objection?

By Mr. Meserow: No objection.

By Mr. Thompson: No objection.

By the Court: Let the record show by agreement of all parties, that will be the procedure.

By Mr. Freeman: Mr. Anderson of the Santa Fe—

By Mr. Thompson: Swear them one at a time and identify them for the record.

By the Court: All right.

By Mr. Freeman: Your Honor, Mr. Cross is one of the defendants in this case, and we call him as an adverse witness.

By the Court: Yes; you may call him adversely.

418 HUGH W. CROSS, called as a witness herein, for adverse examination by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and address?

A. Hugh W. Cross, Jerseyville, Illinois.

Q. Mr. Cross, were you formerly a member of the Interstate Commerce Commission?

A. I was.

Q. In what year were you appointed?

A. 1949.

Q. When were you reappointed?

A. 1951.

Q. On that second appointment your term expired December 31, 1957, did it not?

A. That is right.

Q. According to the normal routine as a Commissioner, if a Commissioner is on the Commission long enough, he becomes chairman of that Commission, is that right?

A. Not necessarily.

Q. Did you become chairman of the Interstate
419 Commerce Commission?

A. I did.

Q. When did you become chairman?

A. July 1, 1955.

Q. Was it known in advance that you would become chairman at that time?

A. Not necessarily.

Q. Did you intend to serve out your full term through 1957?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection.

By Mr. Owens: Objection as immaterial.

By the Court: Sustained.

By Mr. Freeman:

Q. Did you resign from the Commission?

A. I did.

Q. When did you resign?

A. November of 1955.

Q. Was that following an investigation by a Senate—

By Mr. Thompson: We object.

By Mr. Owens: Objection.

By Mr. McConnell: Let him ask the question, please.

By the Court: Let him ask the question.

By Mr. Thompson: It has been ruled out already.

420 By Mr. McConnell: He has a right to ask a question.

By Mr. Thompson: He ought to observe the rulings of the Court made at the pre-trial.

By Mr. Freeman: I am observing the rulings of the Court. Counsel is not observing the rulings of the Court or the decorum of an attorney.

By the Court: Finish your question.

By Mr. Freeman:

Q. And Mr. Cross, was that resignation the result of an investigation by the Government Operations Committee, the so-called McClelland Committee, which was conducted in November of 1955?

By the Court: The objection is sustained, and he does not have to answer the question.

By Mr. Freeman:

Q. Mr. Cross, did you resign from the Commission in order to avoid a public hearing before that Committee?

By Mr. Meserow: Objection.

By the Court: The same ruling.

By Mr. Freeman:

Q. Mr. Cross, I would like to ask you now your
421 relationships with Mr. Keeshin.

First, did Mr. Keeshin approach you in the latter part of March, 1955 to put in a good word for him with the railroads with whom he was negotiating for the transfer contract?

By Mr. Meserow: I object to the question, and I think we have reached the point of the offer of proof now.

By the Court: Sustained. I am sustaining the objection.

By Mr. Freeman: Let me ask a few more questions.

By the Court: I am sustaining the objection, and the witness does not have to answer.

By Mr. Freeman:

Q. Mr. Cross, did Mr. Keeshin ask you to help him get the transfer contract with the railroads with which he was negotiating?

By Mr. Meserow: I object as not material to the issues in the trial.

By the Court: Sustained.

By Mr. Freeman:

Q. Mr. Cross, did you contact presidents of these—
several of the presidents of the six railroads who
422 comprised the negotiating committee for the Chicago transfer contract?

By Mr. Meserow: I object to the question, your Honor.

By the Court: The same ruling.

By Mr. Meserow: I think this man is deliberately poisoning the minds of the jury with these questions, and I think the jury should be excluded and let him make his offer of proof.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Cross, did you, as a Commissioner of the Interstate Commerce Commission, first travel to Baltimore to see the president of the Baltimore and Ohio Railroad, then travel to Philadelphia to see the vice-president of the Pennsylvania Railroad, and then travel to Chicago to see the presidents of the North Western, the Illinois Central and the Santa Fe Railroads in Chicago with this Chicago transfer situation?

By Mr. Meserow: Objection.

By the Court: That has been ruled out, and it is inadmissible and improper, and I think we will refrain from going on with that.

423 By Mr. Freeman: Then I will make an offer of proof, and we can take the next witness.

By the Court: All right; take the next witness.

By Mr. Freeman: Thank you, Mr. Cross.

(Witness excused.)

424 By Mr. Freeman: I will now call Mr. Anderson. Mr. Anderson is likewise being called as a managing agent of the Santa Fe Railroad and as an adverse witness.

By the Court: All right.

RAYMOND T. ANDERSON, called as an adverse witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name, please, Mr. Anderson?

A. Raymond T. Anderson.

Q. And your position?

A. General passenger traffic manager of the Santa Fe Railway.

Q. How long have you held that position?

A. About eleven years.

Q. And you were the general passenger traffic manager of the Santa Fe Railroad in 1955?

A. Yes, sir.

Q. Who was the individual in the Santa Fe organization who attended the Chicago Terminal Lines meeting and reported to you with respect to it?

425 A. That was John Sloan.

Q. And did he prepare a memorandum in the normal course of your business dealings with his committee meetings and negotiations of the Chicago transfer problem?

A. He did.

Q. Did you read and review those memoranda?

A. Yes, sir.

Q. And on occasion, on many occasions you actually signed the memoranda for transmittal to your vice president, Mr. Duffy, did you not?

A. Well, I either signed them or check-marked them, yes.

Q. Did you agree with the memoranda that Mr. Sloan prepared?

By Mr. Thompson: I object to that as immaterial.

By the Court: Objection sustained.

By Mr. Freeman: Sustained?

By the Court: That he agreed with the memoranda.

By Mr. Freeman: Let me identify these and we will see. I would like to have identified first as Plaintiff's

426 Exhibit No. 6 this document taken from the Santa Fe files and coded Santa Fe 74, the memorandum from Mr. Anderson to Mr. Duffy, dated January 7, 1955.

If I may make my offer or my identification together to save time, as Plaintiff's Exhibit No. 7, this memorandum initialed J.L.S. to Mr. Anderson dated February 15, 1955, and coded as Santa Fe 73.

As Plaintiff's Exhibit No. 8, this three-page memorandum dated March 18, 1955, from R. T. Anderson to Mr. Duffy, and as Plaintiff's Exhibit No. 9, this two-page memorandum dated May 23rd, 1955, from Mr. R. T. Anderson to Mr. Duffy, and as Plaintiff's Exhibit No. 10, this two-page memorandum dated June 6, 1955, from Mr. R. T. Anderson to Mr. Duffy.

(Thereupon the documents were marked Plaintiff's Exhibits 6 through 10, inclusive, for identification.)

427 By Mr. Freeman: In conjunction with my earlier offers this morning, I had forgotten to identify for the record, although I did refer to them as Plaintiff's Exhibits 1 and 2, two documents, which I would like the record to show I have had the reporter identify.

By the Court: It may so show.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 1 and 2 for identification.)

By Mr. Freeman:

Q. Mr. Anderson, will you look at Plaintiff's Exhibits 6, 8, 9 and 10—I am leaving out Exhibit 7 for the moment—and tell me whether or not these memoranda were signed by you and sent out to the vice-president of your railroad, Mr. Duffy?

A. Yes, they were.

Q. Did you also see and read the memorandum that has been identified as Exhibit 7?

A. Yes.

Q. And indicate your agreement in the margin of that memorandum?

A. Yes, sir.

Q. Were these memoranda prepared in the regular
428 and normal course of your railroad's business?

A. That is right, yes, sir.

Q. Do they express what happened in connection with some of the occurrences in connection with the Chicago transfer negotiations?

A. I assume so. It was all handled by Mr. Sloan and I accepted his reports as such.

Q. And you transmitted the reports on to the vice-president?

A. Yes, sir.

Q. Is the vice-president the highest officer that you report to?

A. Yes, sir.

By Mr. Freeman: I offer in evidnce Plaintiff's Exhibits 6 through 10, both inclusive.

By the Court: Have counsel seen them?

By Mr. Thompson: May I ask the witness a couple of questions?

By the Court: Yes.

Interim Cross Examination by Mr. Thompson.

Q. Mr. Anderson, did you attend any of these meetings of the negotiating committee that was engaged
429 in considering the bids on this local transfer situation?

A. No, sir.

Q. Are these memoranda which are addressed to Mr. Duffy, which you have identified, and all of which bear your name in typewriting, R. T. Anderson, were they prepared by you or were they prepared by Mr. Sloan?

A. Prepared by Mr. Sloan.

Q. And is it the protocol of the railroad for Mr. Sloan, who was one of your assistants, to address the

memoranda to the vice-president and then transmit them in your name as the general passenger traffic manager?

A. Yes, sir.

Q. This memorandum here, Plaintiff's Exhibit 7, which bears the initials "J.L.S.," and it is addressed to you, on February 15, 1955, that was Mr. Sloan, the "J.L.S."?

A. Yes, sir.

Q. And that was not addressed to the vice-president?

A. Yes, sir, it was not.

By Mr. Freeman: May I ask a few more questions?

430 *Direct Examination (Continued) by Mr. Freeman.*

Q. Mr. Anderson, were these memoranda transmitted to you in the normal course of your railroad's business?

A. Yes, sir.

Q. Were they read and reviewed by you?

A. Yes, sir.

Q. Mr. Anderson, did the views expressed in these memoranda represent your views at the time of the transmittal of the memoranda?

By Mr. Thompson: We object to that and move to strike the answer, if any, on the ground that they are memoranda prepared in the regular course of business by Mr. Sloan through Mr. Anderson's name, and they are not his memoranda or events that he had any knowledge of. In other words—

By the Court: He may answer. The question was whether they expressed his views.

By Mr. Freeman: What was your answer, Mr. Anderson?

By the Witness: Will you repeat the question?

By the Court: Do they represent your views?

431 By the Witness:

A. Yes, I think they would.

By Mr. Freeman: I offer the documents in evidence.

By Mr. Thompson: We object to them as irrelevant to the issue before the Court.

By the Court: May I see them?

By Mr. Thompson: It is hearsay.

By the Court: Let me reserve my ruling until you make the offer of proof.

432 By Mr. Meserow: I object on behalf of my clients for the additional reason that they are not binding on my clients, hearsay as to them, and not relevant to the issue of public injury.

Your Honor has ruled that the method of procuring this contract is outside the scope of the issue in this case.

By Mr. Thompson: Well, I hadn't finished my objection.

By Mr. Meserow: I am sorry.

By Mr. Thompson: When I do finish, I will sit down.

By the Court: Proceed.

By Mr. Thompson: I object also on behalf of all of the railroad defendants other than the Santa Fe that it is hearsay, that is, they are not in any wise bound by it, having had no participation in it and no knowledge of it so far as any showing has been made.

I object on behalf of all of the individual defendants that there is no evidence that it was called to the attention of any of them or that any of them had any 433 knowledge of the contents of the documents and, at least, of the character of hearsay as to all of them.

By Mr. Freeman: With respect to Mr. Meserow's point, your Honor, you will find, if you will read Exhibit 9, the memorandum of May 23rd, that there is considerable discussion of the relative merits of the Keeshin Parmelee proposal, and that the memorandum does speak rather eloquently of the Parmelee proposal.

It is admission against interest, of course. All of these documents are admissions against interest, and that is the ground on which Mr. Thompson seeks to exclude them.

By Mr. McConnell: If your Honor please, may I address myself to one objection which was made on the ground of hearsay.

By the Court: Surely.

By Mr. McConnell: The witness has testified here that these documents were made in the regular course of the business of the railroads. We have a regular business
434 entry statute which is enforced in the Federal Courts. 28 U.S. Code Annotated—

By the Court: They will only be received in evidence against the wifness' company, and I exclude them as against the other defendants.

(Said documents, so offered and received in evidence, were marked Plaintiff's Exhibits 6 through 10.)

By Mr. Freeman: I would like to read the documents to the jury, please.

By Mr. Meserow: I am going to object to that, your Honor. Your Honor excluded them.

By Mr. Freeman: He cannot tell me what to do.

By Mr. Meserow: I am not talking to you. Your Honor ruled that it is excluded as far as my clients are concerned. Why should we be prejudiced before the jury now by his reading the documents?

By Mr. Freeman: We have alleged a conspiracy.

By the Court: The conspiracy is out, and I have sustained the objections on that, and you can't read
435 them on that theory.

By Mr. Freeman: We are reading them on the ground that you have allowed them.

By Mr. Meserow: It is not material to the issue of public injury, your Honor.

By the Court: I have sustained objections as against all defendants except the railroad company and the witness.

By Mr. Meserow: Are you instructing him not to read them?

By the Court: That is right. You can make your offer of proof.

By Mr. Freeman: You have admitted them into evidence, but I can't read them to the jury?

By the Court: Only against the one defendant.

By Mr Keating: Tell them which defendant.

By Mr. Freeman: All right. Only listen to this on behalf of the Santa Fe.

By Mr. Thompson: That has nothing to do with the question of public injury.

By Mr. Freeman: I would like to read Plaintiff's Exhibit 6, which is a memorandum—

436 By the Court: It is before the contract was signed, and they have reference to the question of $1.20, and they may have some relevance to the issue.

You may proceed.

437 By Mr. Freeman: I will read to you first a memorandum from Mr. Anderson to Duffy, dated January 7, 1955:

"Referring to our memorandum of April 27, 1954, File Y-3, advising of agreement made with Parmelee Transportation Company through June 30, 1955, and our later memorandum of October 7, 1954 advising that the coupon rate from July 1, 1954," and so forth.

"A committee consisting of the line in each terminal paying largest amount to Parmelee was appointed to contact other transfer companies in Chicago capable of performing the operation to ascertain if a lower

price could be secured for transfering passengers and baggage between stations in Chicago. A memorandum was prepared outlining the transfer problem and presented to each of the companies contacted and an interview was arranged with the companies interested to answer their questions and progress the matter. We have received a bid from Mr. J. L. Keeshin
438 for transfer of passengers and baggage at charge of $1.20 per coupon, with an escalator clause, and the bid also includes proposal that station forces load and unload trailers which would be hauled between stations by tractors—loading and unloading with our own men would be additional expense for the carriers. A bid was received from the Landon Co. for the transfer of checked baggage only. The Railway Express Agency advised that they would only be interested in the handling of baggage, and this they would do on a 15 per cent plus cost basis.

"The committee is still waiting for a proposal from the Willett Company, and from Mr. Sid Engelhart of New York. When these last two proposals are received they will be presented along with the others to the Chicago Terminal Lines, however, the committee working on the problem did not feel that a change should be made in contractor unless there is a substantial reduction in price.

"The Parmelee Co. has been advised of request
439 made on other contractors for bids made for transfer service, and it has been suggested to them that they come up with a better proposition for the transfer service after July 1, 1955."

Then on February 15, our Exhibit 7, Mr. Sloan wrote to Mr. Anderson, and Mr. Anderson in the margin indicated "I agree," as follows:

440 "At a meeting of Chicago Terminal Lines February 1st, report of committee studying transfer arrangements at Chicago was submitted. Chicago Terminal Lines were advised that we had received one bid for transfer of passengers and baggage from Keeshin at approximately same rate Parmelee is now charging, and one bid for transfer of baggage only. Chairman Padrick advised lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, bid of $1.10 or $1.00 including baggage was submitted by some transfer company.

"Up to this time, the Willett Motor Coach Co. had indicated interest in submitting a bid, but had delayed submission in order to study the matter further—"

By Mr. Keating: Carefully.

By Mr. Freeman: Carefully, I am sorry. I am
441 skipping a sentence or two, and then I want to read on. In the last paragraph:

"Mr. Bone thinks that we should go very slow on any change in operators. We have had no word from Parmelee about any increase or decrease in charge for coupon although they have been advised by Mr. Padrick of the study being made and told that we believe they should come up with some changes that will reduce the transfer cost."

Then on March 18—no, I will skip reading that to you, and read instead Exhibit 9, which is a memorandum of May 23, 1955, from Mr. Anderson to Mr. Duffy:

"Supplementing our memorandum of March 18th, and previous advices about progress of committee of Chicago Terminal Lines studying transfer of passengers and baggage in Chicago.

"The committee met Thursday morning with Mr. J. L. Keeshin, and Thursday afternoon with Mr. M.

Markin, to review their proposals. We understand that Mr. Keeshin has appealed to the executives of
442 the B&O, Pennsylvania, C&NW, and possibly other lines for favorable consideration of his bid. Mr. Keeshin passed a statement around at the meeting showing the amount of freight revenue billed through the truck rail terminal in Chicago which he operates—Pennsylvania received the largest revenue over one million dollars. Other carriers in Eastern territory and carriers operating between Chicago and St. Paul received large amount—Santa Fe received approximately $3,000 revenue.

"Mr. Keeshin proposed to furnish air conditioned, radio-phone controlled eight-passenger station wagons supplemented with some larger equipment for the transfer of passengers, and twenty-foot trailers on a two-hour dispatch for the transfer of baggage. Coupon rate for the transfer of passengers and baggage will be $1.20 for the first year, $1.22 for the second year, $1.23 for the third year, the coupon rate for the fourth and fifth years to be increased one cent for
443 each three cents of wage increase. If Mr. Keeshin is the successful bidder, the drivers would come under a different union and would have to pass a physical examination—Mr. Keeshin is positive there will be no union difficulties.

"We have operated with Parmelee without a contract, but it is felt that in view of expense to be incurred in acquiring new equipment, the operation should be covered by contract after expiration of present letter agreement June 30, 1955. Mr. Markin now submits a proposal of $1.20 for transfer of passengers and baggage effective July 1, 1955, with an increase of one cent in the coupon rate for each three cents of wage increase, with a maximum of a five-cent

increase over the five-year contract and a maximum coupon rate in each year as follows: July 1, 1956, $1.22; July 1, 1957, $1.23; July 1, 1958, $1.24; and July 1, 1959, through June 30, 1960, $1.25.

444 "Mr. Markin states that he will spend $500,000 in the next 18 or 24 months if he is successful bidder to replace trucks with a new type of vehicle and to add 30 new 12-passenger limousines to his present fleet of 20 which will enable the retirement of the older 7-passenger limousines. The other Parmelee services will be continued unchanged, baggage transfers being handled on a two-a-day basis which has been satisfactory.

"There will be a final meeting of the committee on June 3rd to submit a recommendation to all Chicago Terminal Lines. We propose to recommend the continuance of our arrangement with Parmelee because of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal submited by Mr. Keeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition, we will avoid the possibility of labor

445 trouble in connection with operation by a new company with different union."

I won't bother to read Exhibit No. 10.

By Mr. Freeman:

Q. Mr. Anderson, in 1955, were you satisfied with the Parmelee service and your railroad's relationship with Parmelee?

A. Yes, I would say we were.

Q. Mr. Anderson, did you know of the decision to vote for Keeshin prior to the June 3rd committee meeting?

A. No, sir.

Q. Did you find out about it after your railroad had voted for Keeshin?

A. Yes, sir. I was out of town at the time.

Q. Mr. Anderson, would you say that the report and recommendation of this committee of six railroads who were doing the negotiating was determinative of the issue and would in effect bind the other fifteen railroads forming the twenty-one constituting the Chicago Terminal Lines?

A. No.

446 By Mr. Thompson: We object to that as calling for a conclusion which the witness certainly can't answer.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Let me ask this: Did you feel or have you previously testified that the Chicago Terminal Lines depended on the committee of six railroads to make a recommendation which would be the decision on the subject?

By Mr. Thompson: We object to that.

By the Court: The same ruling. Objection sustained.

By Mr. Freeman: I will offer to prove through this witness, and I don't think it is prejudicial to the jury, that—

By Mr. Thompson: I object to any statement of any offer of proof.

By Mr. Freeman: The next witness can testify and I will then make my offer.

By the Court: All right.

By Mr. Freeman: Thank you, Mr. Anderson. Mr. Gurley.

By Mr. Thompson: We have not been able to
447 locate him. Mr. Anderson, wait a minute, before you leave.

We have not been able to locate Mr. Gurley. They asked us just before noon to have him here, and we can't find him. He is retired, of course, and where he is, I don't know.

By the Court: Will you stipulate to let him make the offer of proof in his absence?

By Mr. Thompson: They can read his introduction.

By the Court: I beg your pardon, Judge? I didn't hear you.

(The record was read as above recorded.)

By the Court: Then let it be stipulated by the parties that Mr. Gurley—

By Mr. Freeman: That Mr. Fred G. Gurley was, in 1955—

By the Court: That he may be considered as having been called to testify.

By Mr. Thompson: Let's wait until Mr. Gurley gets here. We will find him.

By the Court: All right.

448 By Mr. Thompson: He is in town somewhere. He was yesterday. Here is Mr. Duffy, if you want Mr. Duffy.

By Mr. Freeman: You wanted Mr. Anderson?

By Mr. Thompson: I am sorry. Yes.

Cross Examination by Mr. Thompson.

Q. Mr. Anderson, in this memorandum of January 7, 1955—

By Mr. Freeman: The 6th.

By Mr. Thompson: Who said 6th?

By Mr. Thompson:

Q. In this memorandum of January 7, 1955, there is a reference made, which is the one Mr. Freeman just read to the jury, and there is a reference made to a memorandum of April 27, 1954.

I show you a document, which we will have marked for identification as Defendants' Exhibit No. 1.

(Thereupon said document was marked Defendants' Exhibit No. 1, for identification.)

By Mr. Thompson:

Q. (Continuing) And I inquire whether that document is the memorandum of April 27, 1954, to which the 449 other memorandum was a supplement or direction?

A. It was.

Q. And this memorandum of April 27, 1954, bears a typewritten signature of yours, or name, rather, and who prepared that memorandum?

A. Mr. Sloan.

Q. And that memorandum was prepared in the regular course of reporting through your name to Mr. Duffy, the vice president, is that right?

A. Yes, sir.

By Mr. Thompson: We think that counsel ought to finish the document that he read to the jury and read this memorandum at the same time.

By Mr. Freeman: I will be glad to if you are tired.

By the Court: I can't compel him to do that, but I say they are both marked and identified and in the record.

By Mr. McConnell: We have a right to present our case.

By the Court: That is right, and I am not going to require you to do it.

By Mr. Thompson: I appreciate your thought, your 450 Honor, but he just said he was willing to do it.

By the Court: By all means let him do it.

By Mr. Thompson: That is all, Mr. Anderson.

(Witness excused.)

By Mr. Thompson: Just a minute, if you please.

By the Court: All right.

GERALD E. DUFFY, called as an adverse witness by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name?

A. Gerald E. Duffy.

Q. And your occupation?

A. Vice president of traffic, the Santa Fe Railroad, Chicago, Illinois.

Q. Were you vice president of traffic in 1955?

A. I was.

By the Court: Which railroad? I didn't hear that.

451 By Mr. Freeman: The Atchison, Topeka, and Santa Fe.

By Mr. Freeman:

Q. What is your address?

A. The Railway Exchange; Chicago, Illinois.

Q. Mr. Duffy, in 1955 did you make any independent investigation of the transfer issue?

A. Personally, no.

452 Q. Did you rely upon the data accumulated and the memoranda submitted to you through Mr. Anderson?

A. To the extent I have any knowledge of the subject, yes.

Q. Mr. Duffy, I am going to ask you to discuss with us the meetings that you had with Mr. R. G. Rydon. Who is he in the Santa Fe Railroad?

A. The vice-president in the executive department of the Santa Fe Railroad.

Q. Is his named spelled R-y-d-o-n?

A. That is right.

Q. Did you have two meetings with Mr. Rydon shortly before June 3rd when the committee was to meet on the transfer issue?

A. I did.

Q. And at this first meeting did Mr. Rydon tell you that the president of the railroad wanted to know the status of the transfer negotiations?

A. That is correct.

By Mr. Thompson: We object to all of this. It is hearsay as to everybody except the Santa Fe Railroad.

By the Court: Objection sustained as to everybody except his own railroad.

453 By Mr. Freeman: You know what our theory is.

By Mr. Freeman:

Q. Did you advise Mr. Rydon that you had a memorandum prepared as of May 23rd, which was a recommendation of your passenger people for Parmelee?

A. I don't think you said that just right. I had a memorandum from Mr. Anderson — prepared by Mr. Anderson covering the subject that you indicated.

Q. I asked you whether you advised Mr. Rydon of that memo.

A. I did, yes, sir.

Q. Did you furnish him with a copy of it?

A. I am not too certain whether I did or not, but he certainly got the information contained in the memorandum.

Q. Did Mr. Rydon come back shortly thereafter and tell you of his conversation with President Gurley?

A. He came back in a day or two days, very shortly thereafter.

Q. Weren't you waiting outside Mr. Gurley's office at the time he had this second meeting with you?

A. No, sir.

Q. Did Mr. Rydon at this second meeting advise you that he had discussed the transfer issue with Mr.
454 Gurley and that he wanted to know from you if it was possible to give the contract to Keeshin without injuring the Santa Fe?

A. Well, I think something to that effect was said, yes, sir.

Q. Didn't he say exactly that?

A. Well, I am not going to take the quotation as exact, but the substance of the quotation is correct.

By Mr. Meserow: I object to the question and ask the answer be stricken because it is —

By the Court: I will rule it is not admissible against any of the defendants, as I said, excepting his own company.

By Mr. Meserow: It is outside the issues of this trial.

By the Court: That goes without saying on the general ruling. We are going on with the same ruling on the same basis.

By Mr. Freeman:

Q. In other words, it is fair to say that Mr. Rydon was asking you whether it was possible, without hurting the Santa Fe, to give this contract to Keeshin?

A. I think that is a fair summary of the conversation.

Q. Did you then call Mr. Sloan into your office?

455 A. No, I don't think I did at that time.

Q. Pardon?

A. At that time I don't think I did.

Q. Did you call him into your office or did you have a meeting with Mr. Sloan prior to the June 3rd committee meeting that he was to attend?

A. I had one, yes, sir, after Mr. Rydon's visit.

Q. Did you advise Mr. Sloan of your conversation with Mr. Rydon and of the president's interest in the transfer?

By Mr. Thompson: If the Court please, I should think it would be proper for counsel to ask the questions instead of testifying himself.

By Mr. Freeman: This is an adverse witness, your Honor.

By Mr. Thompson: That doesn't mean you can recite his testimony, your Honor.

By Mr. Freeman: I don't intend to recite his testimony, and this man is completely independent of me.

By the Court: Proceed.

By the Witness: May I have the question?

By Mr. Freeman:

456 Q. May I give it to you again?

A. Yes, sir.

Q. Did you instruct Mr. Sloan to vote for Keeshin as a matter of policy?

A. The answer is yes.

Q. Did you advise Mr. Sloan that Mr. Gurley had sent the orders down to that effect?

A. I am not too sure of whether I did or not. I am very honest that I don't know when I gave him the orders to vote for Mr. Keeshin.

Q. To vote for him as a matter of policy?

A. That is right.

By Mr. Freeman: I have nothing further of Mr. Duffy.

By the Court: Are there any other questions? If not, thank you very much.

(Witness excused.)

By Mr. Freeman: I would now like to present, in the absence of Mr. Gurley — and if he is here, I will go on with him, or I will take him whenever he comes.

457 By Mr. Thompson: Mr. Morehouse is here, who you wanted to examine.

By Mr. Freeman: I will dispense with Mr. Morehouse. We won't take him. This is the deposition of Mr. P. H. Sullivan, who is the assistant passenger sales manager for the Sou Line and who lives in Minneapolis.

His deposition was taken in Minneapolis.

By the Court: You may proceed.

By Mr. Freeman: Will you excuse me a moment while I find the deposition?

By the Court: Yes.

By Mr. Freeman: Rather than delay the court while Mr. Borst finds Mr. Sullivan's deposition, I can go on with any other witnesses that you have. Is Mr. Wayne Johnston of the Illinois Central here?

By Mr. Thompson: You didn't ask for him to be here today.

By Mr. Freeman: Possibly it will take the rest of the afternoon for my offer of proof, your Honor.

By Mr. Thompson: Just a minute. Mr. Padrick is here. You don't want him, do you?

By Mr. Freeman: No.

By Mr. Thompson: We have not located Mr. Gurley yet.

By Mr. Freeman: I also want to read the deposition of Mr. Clarence Diver, who is an attorney in Wau-
458 kegan, Illinois, more than one hundred miles from here, in connection with Mr. Cross' testimony, and I would want to read the deposition of Mr. Miller, who is a real estate broker located in Washington, D.C., more than one hundred miles from here.

I would like to read the deposition of Mr. M. E. Kline, the former manager of the Coal Traffic, Rates and Sales of the Pennsylvania Railroad, so I do think I can have enough to occupy us for the rest of the afternoon.

By the Court: Except you want the depositions read before the jury, unless it is otherwise agreed?

By Mr. Freeman: Unless it is agreed.

By the Court: Unless it is agreed they may be read—

By Mr. Freeman: All of these depositions, except the one of Mr. Sullivan, would have to do with Mr. Cross' participation in what we are pleased to call a conspiracy or part of that type of proof of our public injury.

By the Court: Do you insist on reading them before the jury?

By Mr. Freeman: If counsel has no objection, I would just as soon excuse the jury.

By Mr. Thompson: It is news to me geographically that Waukegan is more than a hundred miles from here.

459 By the Court: I will not stand on a few miles here more or less. I heard that, but I passed it up.

By Mr. Freeman: Isn't it really?

By Mr. Thompson: No; it is only half that far, and that is not just a few miles, your Honor.

By the Court: If you make an objection validly, I will listen to it.

By Mr. Meserow: I am objecting, because these depositions have nothing to do with the issue of public injury, and your Honor has excluded them on a previous ruling.

By the Court: Did I?

By Mr. Meserow: Yes.

By the Court: Then I certainly will stand by my ruling.

By Mr. Freeman: I would like to read these before the jury, and you will have an opportunity to make objections.

By Mr. Thompson: Of course, three of them have to do with real estate transactions which your Honor has

ruled out, and therefore to have them read is a violation of the ruling already made.

By the Court: I am relying on your guidance. Have I passed upon these exhibits?

By Mr. Meserow: Yes.

460 By Mr. Thompson: Mr. Diver's deposition and Mr. Kline's deposition and Mr. Miller's deposition.

By the Court: Did I rule upon them, Mr. Freeman?

By Mr. Freeman: Well now—

By Mr. Thompson: Now then, Mr. Freeman, don't you—

By Mr. Freeman: Mr. Thompson, don't start accusing me, if that is what you were going to say. Your ruling did not deal with any oral testimony. Your ruling said we would have a right to present oral testimony.

461 By the Court: My impression is that I did not rule upon the areas, even though I had been requested, and I finally got the transcript of Judge Robson, and I did not rule upon areas of testimony.

I excluded documents, certain documents and admitted some.

By Mr. Freeman: You said with respect to the exclusion—

By the Court: That I would determine the question of admissibility of testimony if and when it was presented.

By Mr. Freeman: And also with respect to documents, that you would determine that issue, too.

By the Court: Yes, that if it became material I would let them in. There is no question about it.

By Mr. Thompson: It is perfectly obvious without any further horsing around about it by counsel for the plaintiff, that this testimony respecting the real estate transactions, of which your Honor is fully familiar by reason of the presentation of the documents, has nothing whatever to do with the public interest.

By the Court: If and when I hear it, I am going to rule upon it.

By Mr. Thompson: It has nothing whatever to do with the public interest. The damage is already done when
462 you shovel it in.

By the Court: No, sir, it will not be done until I get some inkling what it is. I am not a mindreader.

By Mr. Thompson: All right.

By the Court: If and when he makes a statement, if they pertain to a real estate deal in which documents were offered and I sustained them, I will exclude that transaction from the record primarily because it is in the conspiracy and hasn't any probative value on the question of public injury.

By Mr. Thompson: That is exactly what this has to do with.

By Mr. Freeman: Let me say one thing in that connection. We have said it many times, but let me say it again.

As Mr. McConnell has said, we feel the question of public injury also includes the matter of conspiracy, and we have also urged, as a matter of public injury, the public services of Mr. Cross were violated and this, too, constitutes a public injury we should be permitted to go into.

By the Court: Let's have it understood now, that I will not consider that as part of a public injury in that phase. You may make an offer of proof if and when the jury is not in the box, but I will not permit any
463 testimony, because any direct, immediate and exclusive bearing on conspiracy will not go before the jury here.

By Mr. Freeman: If we can agree that all of these depositions that I have enumerated, except Mr. Sullivan's, have to do with certain phases of Cross' activity that

have relation to the conspiracy phase of our proof of public injury, we can then go ahead and read them outside the presence of the jury on the theory that you would rule consistently.

By the Court: That is right.

By Mr. Freeman: That they are to be excluded.

By the Court: And I want to be as consistent as I know how.

By Mr. McConnell: As I understand it, your Honor, what we are trying to do is prevent having the jury run in and out of the court room. We are trying to do what we can before the jury, and I would suggest that we go ahead with what we can do before the jury without having them running back and forth here and out in Limbo somewhere, not knowing what is going on.

By the Court: Who said you can't?

By Mr. Freeman: Mr. Simpson is president of the Baltimore and Ohio and a defendant. Unfortunately, despite all of these papers, I think we have failed to
464 get about half of the depositions that were taken, and I believe Mr. Borst is downstairs trying to get the out of town depositions.

By the Court: They must be here.

465 By Mr. Freeman: May we have a recess for five minutes?

By the Court: Yes.

(And thereupon the following proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: Mr. Simpson is the president of the B&O and is in Baltimore, of course, and he is a defendant, and he is an officer of a defendant, and therefore he can be called under these rules and this deposition can be read.

Mr. Whittington is also the general passenger traffic manager of the Baltimore and Ohio, and I assume he comes within this designation of a managing agent.

Those two men are both in Baltimore, and I can't think that any of their testimony has to do with this limited issue which your Honor has indicated.

By Mr. Freeman: Oh, yes.

By Mr. Thompson: But Mr. Whittington's testimony, as far as we are concerned, who had to do with this whole thing, could be given at length, and we will produce him here if they want to examine him.

As far as Mr. Simpson is concerned, it seems to me that there is no point in having him travel here from Baltimore to put him on the stand and swear him.

466 By Mr. Freeman: I think that is right, and we can read his deposition. That is one of the reasons why I have asked for the deposition to come in.

By Mr. Thompson: Whittington you want here?

By Mr. McConnell: We have not asked for either one of them. We are just asking to read the depositions. That is all we want to do. We have a right to read his deposition, as you can see. We have no argument about that.

By Mr. Thompson: They did ask that they be produced here, and that is when we were going to try this full dress, I suppose.

By Mr. Freeman: Let me leave Whittington. If we need him, I will tell you in plenty of time. We will want Mr. Nelson of the B&O, and we will read Mr. Simpson's deposition here.

Mr. Nelson is here in Chicago, and can you bring him?

By Mr. Thompson: Yes.

By Mr. Freeman: We have asked for the Santa Fe people, and the only person you have not brought is Gurley, and I understand about that.

With respect to the Illinois Central, can you get Mr. Wayne Johnston and Mr. Smart?

By Mr. Thompson: Both of them will be here in
467 the morning, and Mr. Gurley will be here in the morning.

By Mr. Freeman: With respect to the Pennsylvania Railroad, we want Mr. Carpi's deposition, if it is not convenient for him to be produced, and we will understand that, and we will read Mr. Comer's deposition and Mr. Kline's deposition. I don't know whether you can get ahold of Mr. Holt, who is retired, and if you can't get him, tell us.

In the case of the New York Central, we want Perlman, Baird, Fawcett and Bone. We will have two or three other witnesses, and we will get together.

I may serve you with a few subpoenas to bring certain documents in that I want that you have not produced yet, and I will try to do that tomorrow.

By Mr. Thompson: You want Keeshin after all of these?

By Mr. Freeman: I would like Mr. Keeshin as long as we are here when we get to a pause now, and we will go on with Mr. Keeshin.

If Mr. Gurley and the other witnesses are here tomorrow, I would rather have them first and then Mr. Keeshin.

We would like Mr. Quackenbush tomorrow morning, if we can have him. I know he is not here now and rightly excused. There are a few questions we would like to
468 ask him in person.

By the Court: All right; we will take a recess.

(Thereupon a short recess was taken, after which the following further proceedings were had herein:)

469 (Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: What is the program? Do you have any witnesses?

By Mr. Freeman: We have a deposition that we want to read to the jury.

By the Court: Do you want to call a witness first? If you are going to read depositions, I can excuse them and let them go home.

By Mr. McConnell: We have to read the deposition to the jury. This is evidence on your issue; right on it. It is right on the issue.

By the Court: All right. Bring out the jury.

By Mr. Meserow: Whose deposition is this?

By Mr. McConnell: P. H. Sullivan.

(Whereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: These minutes get longer, don't they ladies and gentlemen?

All right; proceed.

By Mr. McConnell: May it please the Court, I 470 want to read into evidence the deposition of P. H. Sullivan, taken pursuant to a notice under the Federal Rules of Civil Procedure, at 1630 Rand Tower in the City of Minneapolis, State of Minnesota, at 2:00 o'clock on the 9th day of August, 1957, before Jack Penman, a notary public of the County of Hennepin, State of Minnesota—

By the Court: Do the jurors understand what depositions are? These are documents reporting and recording evidence, taken of an absolute witness, not in the presence of the Court but under oath, and when read before

a jury has the equivalency of testimony on the witness stand.

By Mr. McConnell: This witness is obviously more than a hundred miles from the court house.

By the Court: That is all right.

By Mr. McConnell: I don't think we will bother having anybody on the stand. I will just read it, if it is all right with your Honor.

"P. H. SULLIVAN, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stevens.

Q. Will you state your name, please?

471 A. Paul—do you want the full name, the middle initial, and everything?

Q. You might as well give us your middle initial.

A. Paul H. Sullivan.

Q. And are you here in response to a subpoena, Mr. Sullivan?

A. Yes.

Q. And is this the subpoena which was served upon you?

A. Yes."

By Mr. McConnell: Then there was marked Sullivan Exhibits 1 and 1-A, two documents.

By Mr. McConnell: (Reading)

"Q. What is your occupation, Mr. Sullivan?

A. I am assistant manager, assistant passenger sales manager for the Soo Line Railroad.

Q. Where is your office?

A. Room 1601, First National Soo Line Building, Minneapolis, Minnesota. Minneapolis 2, Minnesota.

Q. Now where is your residence?

A. 4315 Bryant South.

Q. Minneapolis, Minnesota?

A. Minneapolis, Minnesota.

Q. And that is your permanent home?

472 A. Yes.

Q. What was your position in 1955?

A. Different title, same position, assistant general passenger agent.

Q. How long have you had the same position? I will omit discussion of the title, but have you had roughly the same duties?

A. April 1st, 1952.

Q. And would you summarize the duties which you have had since April 1st, 1952?

A. Assistant in the direction of the passenger department.

Q. And to whom do you report?

A. R. F. Berndt, passenger sales manager.

Q. Do you have an assistant directly under your supervision, or do you have a group of people that are subject to your supervision?

A. There is a group of people who work in the office.

Q. From time to time since April 1st, 1952, have you attended meetings of the Chicago Terminal Lines?

A. Yes.

Q. Has it been part of your duty to represent the Soo Line Railroad at such meetings?

A. Yes.

Q. Have other employees of the Soo Line attended 473 such meetings since April 1st, 1952?

A. Yes.

Q. Who else?

A. T. J. Nolan, city passenger agent, Chicago.

Q. Is he the only one?

A. The boss may have gone to one or two, I don't know.

Q. The boss is Mr. Berndt?

A. Mr. Berndt may have gone. I don't recollect that he did.

Q. When Nolan went, did he go as your substitute or as your assistant?

A. He went to represent the Soo Line.

Q. Would he go when you were not present?

A. Yes.

Q. How often did that happen?

A. Oh, I would say roughly two or three times. It is hard to guess.

Q. About how many times did you attend such meetings, just roughly? I don't hold you to any specific number.

A. Frankly, I don't know.

Q. Well, was it more than two or three?

A. Oh, I would say five or six.

474 Q. Were you the regular representative of the Soo Line at such meetings?

A. Yes, I would say I was. There were times it wasn't convenient for me to go.

Q. Then Mr. Nolan attended?

A. Mr. Nolan attended.

Q. And possibly Mr. Berndt did?

A. Yes.

Q. Did you attend any meeting during the period since April 1st. 1952, at which the subject of transfer of passengers and baggage among stations in Chicago was under discussion?

A. Yes.

Q. Do you know if either of these other two gentlemen attended such meetings?

A. I believe Nolan did.

Q. Do you happen to know which such meetings he attended?

A. No, I don't recollect.

Q. Do you know if it was during 1955?

A. I am not sure.

Q. Have you brought with you some papers pursuant to the subpoena which was served on you?

A. Yes.

475 Q. I wonder if we can look at those and perhaps we could establish from those papers who attended what meeting.

Would it be possible for you, Mr. Sullivan, by looking at your own file to determine what meetings during 1955 concerning the transfer of passengers and baggage, that is, meetings of the Chicago Terminal Lines, were attended by any representative of the Soo Line?

A. Did you say in 1955?

Q. Yes.

A. Do you want me to call the office from here?

Q. Yes. Are you going to answer that merely by looking at the circular that the committee itself promulgated is that it?

A. This is the first one I ran into.

Q. Yes, call the office.

A. What do you want, the date of the meeting or—

Q. The date of the meeting and the representatives of the Sou Line.

A. September 14, 1955.

Q. Who attended that?

A. P. H. Sullivan. Do you care about the ones we didn't attend?

476 Q. Well, I really just want to—all I am trying to do is to find out who on behalf of the Soo Line was at the meetings during the year, and I would like to know which ones you attended or Mr. Nolan or Mr. Berndt.

A. September 9, 1955, T. J. Nolan. I think that does it.

Q. Did you ever prepare any memoranda of meetings, memoranda of what went on at any meetings during 1955?

A. Yes..

Q. Didn't you attend a meeting on February 1st, 1955?

A. Evidently.

Q. I would like to see the original of the memorandum that you prepared with regard to that meeting, if you have it."

And the witness handed a document to the examiner.

"Q. Do you have other memoranda which you prepared of meetings which you attended, including other memoranda of this meeting, if you have any?

A. Those are handwritten notes of which you have a copy."

Then there is some colloquy between counsel.

The next question was:

477 "Q. Mr. Sullivan, have you any other documents which are memoranda which you prepared of meetings of the Chicago Terminal Lines or have you handed me all that you have?

A. I will have to go through the files and see. What period of time are you talking about?

Q. Well, all of my questions have been directed at 1955."

Then there was further colloquy between counsel and the witness said:

"A. Here is one dated September 19, 1955.

Q. And that is a memorandum which you prepared, I take it?

A. That is right.

Q. Is this memorandum of September 19, 1955, among the documents which you voluntarily disclosed to Parmelee?

A. Yes. Do you want me to find out if there is any more more in there?

Q. We will stay with these for now."

That document was marked for identification Sullivan Exhibit 2.

"Q. I show you a document which has been marked Sullivan Exhibit 2 for identification, and ask you if
478 that is in your handwriting?

A. Yes.

Q. Can you tell me when you prepared it?

A. At a meeting of the Chicago Terminal Lines on Tuesday, February 1st, 1955.

Q. Were the penciled notations actually made while you were present at the meeting?

A. Yes.

Q. And you were attending that meeting as a representative of the Soo Line Railroad?

A. Yes.

Q. For what purpose did you make the penciled notations on Sullivan Exhibit 1 for identification?

A. For the purpose of making a report to my superior when I returned.

Q. And did you subsequently make a report to your superior?

A. I did.

Q. Was that report reduced to writing?

A. It was.

479 Q. And is the document which is dated February 3rd, 1955, which has been previously marked as Soo-2, being a typewritten document on a yellow piece of paper, the original of that document?

A. Yes.

Q. Now was this report delivered to your superior at the Soo Line Railroad?

A. Yes.

Q. Do you know if any action was taken on it?

A. I don't understand what you mean by action.

Q. Well, what happened to the document ultimately, if you know? Was it placed in the permanent files of the railroad or what was done?

A. My superior read it and it was placed in the file.

Q. Is that the only record prepared by a representative of the Soo Line Railroad of what transpired at that meeting, if you know, to the best of your knowledge? And I don't mean—I mean, of course, to except the penciled note that went with it.

A. So far as I know that was the only record prepared by a Soo Line representative.

Q. And as far as you know, is that the only record maintained in the files of the Soo Line Railroad of 480 what transpired at that meeting?

A. I don't know.

Q. Mr. Sullivan, the penciled memorandum which has been identified as Sullivan Exhibit 2 for identification, does that contain notes of what was said at the meeting or notes of what you were thinking?"

By Mr. McConnell: The answer was: "I don't think the question has an answer."

By Mr. McConnell: (Reading)

"Q. What are the penciled notes, Mr. Sullivan? What were you making notes of?

A. I was making notes of various things that were said by various people at the meeting, also my reaction to them.

Q. Would you give me an example of your reaction to what was said?

A. After three years, that is rather difficult.

Q. Just so we can be sure we have the handwriting accurate, would you read me what the memorandum says

about the first line which goes all the way across the page?

A. Keeshin first—"

By Mr. Thompson: Just a moment, please. We object to readng any part of any memorandum. This Soo Line Railroad is not a defendant in this case. The witness 481 is not a defendant in this case. All the matter that he is reporting that he heard and saw and what have you is hearsay as to every defendant in this case.

We object to reading any memorandum.

By the Court: Is that correct, Mr. McConnell? Soo Line is not a defendant in this case?

By Mr. Thompson: No.

By Mr. McConnell: Soo Line is not a defendant, but the Soo Line was a member of the Terminal Association and attended these meetings.

By the Court: The objection will be sustained.

By Mr. McConnell: I haven't finished my statement, if the Court please.

By the Court: I am sorry. I thought you had.

By Mr. Thompson: There is no Terminal Lines Association.

By Mr. McConnell: Here is a man who went to a meeting at which representatives from the defendant railroads were present. He wasn't the only one at the 482 meeting. The defendants were there too. He is testifying under oath with them present to cross examine him.

By the Court: He is testifying to his own personal memorandum.

By Mr. McConnell: No, he is testifying now as to what the defendants and the other people did and said and what the activity was at the meeting.

By the Court: I understand, but the way to prove that is by testifying that the meeting was held, who was present, what was said, and who said it; not by a personal memo of what he recorded afterwards.

By Mr. McConnell: He didn't record it afterwards. He recorded it at the time.

Now we have shown that he doesn't have independent recollection of what was said at the time, and he is reporting from the memorandum which he made at the time, and he was there and these defendants were there.

This isn't hearsay at all. This is testimony of what occurred at a meeting at which they were present.

483 By the Court: May I see that, please?

By Mr. Thompson: If the Court please, there is no evidence that any defendant was present at this meeting.

By Mr. McConnell: It was the Terminal Association made up of 21 railroads which were involved in this lawsuit.

By Mr. Thompson: Your Honor asked for the memorandum. I suppose the first one he is referring to is the penciled notation.

By Mr. McConnell: Can we reserve the ruling until we get the foundation in? I haven't offered it in evidence. If he doesn't want me to read it—

By the Court: If you want to reserve reading it until after you have laid the foundation?

By Mr. McConnell: All right, we will do that.

By the Court: Fine.

By Mr. McConnell: I won't read anything from the document at this time.

By the Court: All right.

By Mr. McConnell: (Reading)

"Q. Do you recall whether there was a discussion 484 which led you to make those particular notations?

A. Yes.

Q. To the best of your recollection, will you tell me what that discussion was?

A. The gist of it is in the notes.

Q. Can you tell me who participated in the discussion?

A. No, I can't.

Q. Can you recall anything about the discussion except what is in the notes?

A. No, I can't.

Q. Would that be true of all the notes on the memorandum, Mr. Sullivan?

A. Let me get that question correctly. What is it you want to know now?

Q. Do you have any independent recollection of what was said at that meeting which goes beyond what these notes reveal?

A. No.

485 Q. Before coming here, Mr. Sullivan, did you read through these documents so you have had a chance to try to refresh your recollection and still will say no, I assume?

A. Yes, I read through them.

Q. And after reading through these documents, you do not recall anything that was said at this meeting that is not revealed in these memoranda, is that correct?

A. That is correct.

Q. The only reason I am asking is, I don't want to take the time and ask you a lot of questions if you say this is all you can recall about it. Do you see toward the middle of the memorandum the word 'Parmelee' in your handwriting?

A. Yes."

By Mr. McConnell: Now, he wants him to read that entry, and I will leave the entry alone until we get through reading what he said about how he did it.

By Mr. McConnell: (Reading)

"Q. Do you recall, Mr. Sullivan, if there was discus-

sion at that meeting by other members of the committee, subcommittee of six railroads . . ."

486 By Mr. McConnell: If I may interpolate a moment, the six railroads are the six defendant railroads in this case.

(Continuing reading):

". . . by persons on that subcommittee, not including Mr. Padrick?

A. At this late date it is hard to recall who said what.

Q. Do you recall whether other people made comments besides Mr. Padrick?

A. At a general meeting everybody makes comments.

Q. I am not going to try to ask you just exactly who said what, because obviously you couldn't remember, but would it be true, Mr. Sullivan, that there was general discussion of the subject matter of the meeting by the persons present?

A. By all the persons present, yes.

Q. Did you participate in the discussion?

A. I don't recollect; if at all, in a minor way.

Q. I just want to be sure the record isn't incorrect because of inadvertence of either of us.

Did anyone from the Soo Line Railroad attend the meeting of June 13, 1957? I think up to now the

487 indication is that no one did, and I want to be sure that is right." That should be 1955.

(Continuing reading):

"A. I don't recall.

Q. Would you be able to tell by looking at the file?

A. We don't seem to have any record in that file of that particular meeting.

Q. So as far as your recollection is concerned and as far as the file of the Soo Line Railroad is concerned, it would appear that no representative of the Soo Line attended that meeting, is that correct?"

By Mr. McConnell: And the further question:

"Q. Well, Mr. Sullivan, do you recall whether you or any other representative of the Soo Line attended that meeting?

A. I don't recall clearly. I think I may have been there, but I am not sure."

By Mr. Thompson: We move to strike that answer as sheer speculation. He says he doesn't know, and if he doesn't know, that is the end of it.

By Mr. McConnell: He thinks he may have been there.

488 By Mr. Thompson: Of course, but that is no testimony that he was there, because he thinks he was there. This is the June 13 meeting of 1955, and he says he doesn't recall, and that ought to be the end of it. He can't guess whether he is there or not.

By the Court: I am mindful of it. Let's proceed.

By Mr. McConnell: (Continuing reading)

"Q. Is there any document which is responsive to the subpoena which has been served upon you to appear today which indicates the Soo Line was represented at that meeting?

A. Not that I know of.

Q. And would you just for the record indicate roughly how many documents you have brought here today? Don't try to count them, but it is a stack of so many inches high, or something of that nature."

By Mr. McConnell: And then there was colloquy with counsel, and there was an off-the-record discussion and the following question:

"Q. While we were off the record, Mr. Sullivan, did you examine the portion of the files which you pro-
489 duced this afternoon which covered the period during June of 1955?

A. Yes.

Q. And did you find in that part of the files anything to indicate that the Soo Line Railroad was represented at the June 13th meeting?"

By Mr. McConnell: And then he rephrased the question:

"Q. Did you find anything in there to indicate you were there, that is all, or anybody else from the Soo Line was there?

A. I found no record of any meeting on June 13, 1955.

Q. To the best of your information and belief, Mr. Sullivan, are these files complete?

A. To the best of my information and belief, yes, sir.

Q. Can you account for the fact that no record appears in the files of the Soo Line Railroad of any representative of that railroad attending that meeting?"

By Mr. Thompson: I object to that question as calling for a speculative answer.

By the Court: Objection sustained.

490 By Mr. McConnell: The next question is as follows:

By Mr. McConnell: (Reading)

"Q. I don't mean to question your record. I just mean was this a meeting of sufficient importance to the Soo Line Railroad that they would have felt that they should definitely have been represented at the meeting?

By Mr. Thompson: Same objection.

By the Court: Sustained.

By Mr. McConnell: He didn't answer it anyway.

The next question is:

By Mr. McConnell: (Reading)

"Q. Well, I don't think you have the privilege of deciding what questions you will answer and what you will not answer, Mr. Sullivan.

A. May I answer in my own way, then?

Q. Yes, you may.

A. Ordinarily when these things come in, they are given to the file clerk to file.

Q. I am not asking you about your files, Mr. Sullivan. I am satisfied your files —

A. You want to know why it isn't in there?

491 Q. I want to know why you may not have attended the meeting."

By Mr. Thompson: I object to that as speculative.

By Mr. McConnell: He said he didn't know.

By Mr. McConnell: (Reading)

"Q. Was the meeting of importance to the Soo Line Railroad?"

By Mr. Thompson: I object to that as asking for a conclusion of the witness.

By the Court: Sustained. How can he know if he wasn't there?

By Mr. McConnell: Well, he knew what the meeting was about, I think. It was about the transfer.

By the Court: Objection sustained.

By Mr. McConnell: (Reading)

"Q. Did you have any standing instructions with respect to these meetings?

A. No.

Q. What considerations influenced the decision of whether you would attend or not attend?"

By Mr. Thompson: We object to that as immaterial, calling for a conclusion.

By the Court: Objection sustained.

492 By Mr. McConnell: (Reading)

"Q. Did you get reports of what went on at these meetings from a representative of any other railroad at any time?"

By Mr. Thompson: I object to that.

By the Court: He may answer yes or no.

By Mr. McConnell: He says:

By Mr. McConnell: (Reading)

"A. Only from the Western Passenger Association, or rather, from the Chicago Terminal Lines Committee."

By Mr. Thompson: I move to strike that.

By the Court: I will let it stand.

By Mr. McConnell: (Reading)

"Q. Only through these mimeographed promulgations?

A. That is right.

Q. Did you have any oral discussions with any members of the committee of six railroads that was primarily charged with the duty of handling these negotiations?

A. Oral discussions concerning what?

Q. For example, if you missed a meeting, was there someone on the committee that you might call up and say, 'What happened?' or something of that nature?

A. I might have; I don't recollect.

Q. As far as you recall, you relied on what is in 493 the file, is that right?

A. That is right.

Q. In preparing such memorandum as you prepared, which would include this memorandum of the meeting of February 1, 1955, did you make a conscientious effort to prepare an unbiased report of what went on at that meeting?"

By Mr. Thompson: If the Court please, I think that is seeking to impeach their own witness and is an immaterial thing, what effort he made.

By Mr. McConnell: It is his foundation for whether or not he made it in the regular course of business.

By the Court: Proceed; it may stand.

By Mr. McConnell: (Reading)

"Q. You didn't hold any brief for any of the parties that were involved in this negotiation, did you?

A. I worked for the Soo Line. My reports were made to the Soo Line with that in mind.

Q. The purpose being to give them as accurate a report as you could of what went on at the meeting, is that right?

A. That is right.

494 Q. I certainly didn't intend to impeach you, Mr. Sullivan, just in case you were influenced by what Mr. Tone said. We previously obtained photostats of some other documents in the file of the Soo Line Railroad, and I will just show you a photostat of a document dated February 13, 1956 with a notation Soo-4 on it and ask you what that is, if you know.

A. That was a letter written in answer to one we wrote regarding operations of railroad transfer.

495 Q. And does the original of this letter appear in the files of the Soo Line Railroad?

A. Yes, sir.

Q. Who is Mr. Foster?

A. Manager of mail, baggage and express traffic of the Soo Line Railroad."

By Mr. McConnell: And then that document was marked for identification as Sullivan Exhibit No. 4.

(Continuing reading):

"Q. Mr. Sullivan, except for the fact that the documents are a couple of years older than when they were prepared, are Sullivan Exhibit 2 and Sullivan Exhibit 3 in the same condition as when you prepared them or had them prepared by your stenographer?

A. What do you mean by that question?

Q. What I mean is, has anything been erased from the document or added to the document after the time the document was first prepared, these two including the reference to Soo in the lower right-hand corner and the marks the court reporter made this afternoon?

A. Not to my knowledge.

Q. Do you recall anything which was said at any of these meetings about negotiations with the Railway
496 Express Agency?

A. Yes.

Q. What do you recall about such?"

By Mr. Thompson: I object to that as immaterial. The Railroad Express Agency is no part of this case.

By the Court: Read the question.

By Mr. Thompson: What would be said about it would be hearsay.

By the Court: I am asking him to repeat the question.

By Mr. McConnell: The question was:

"Q. Do you remember anything that was said . . ."

By the Court: By whom?

By Mr. McConnell: (Reading)

"Q. Do you recall anything which was said at any of these meetings about negotiations with the Railway Express Agency?"

And he said:

"A. Yes."

By the Court: Proceed.

By Mr. Thompson: The next question is the one I am objecting to.

By the Court: I will hear it.

497 By Mr. McConnell: (Continuing reading)

"Q. What do you recall about such?"

By Mr. Thompson: That, of course, is rank hearsay as to every defendant, and it is immaterial.

By the Court: Objection sustained.

By Mr. McConnell: There isn't any hearsay where the people are present.

By the Court: There is only one way of reporting a proceeding of a committee and that is as to what was said, who was present, when it was held and who said it.

By Mr. McConnell: If he can do that, all right, and if he can't, we are entitled to secondary evidence.

By the Court: I know of no shortcut to that rule.

By Mr. McConnell: (Continuing reading)

Cross Examination by Mr. Tone.

Q. You did not necessarily make a memorandum of every meeting you attended, did you, Mr. Sullivan?

A. No, sir."

By Mr. McConnell: That was all, and then there is redirect examination as follows:

498 "Q. Mr. Sullivan, were these memoranda about which we have talked this afternoon prepared for any personal use of yours? In other words, do you have any desire to use them in any capacity other than as a representative of the railroad?

A. They are prepared for company business.

Q. In the regular course of company business?

A. That is right.

Q. You certainly know what the company business was, don't you?

A. They were prepared for the record for company business purposes.

Q. In each instance, when you felt the subject matter merited a memo report to your superiors would you prepare a memorandum?

A. At times I reported verbally."

By Mr. Thompson: I object to that as calling for a conclusion.

By the Court: I will let it stand.

By Mr. Thompson: He didn't answer.

By Mr. McConnell: He did. He said, "At times I reported verbally."

By the Court: Proceed.

By Mr. McConnell: (Reading)

"Q. Did you ever attend any meetings where you
499 made no report?"

By Mr. McConnell: And then the question was rephrased:

"Q. After every meeting did you make either an oral or a written report?

A. Yes.

Q. Was it therefore your regular practice to make a regular report to some other representative of the railroad after each such meeting?

A. Yes.

Q. And this document which is marked Sullivan Exhibit No. 3, for identification, is one of these reports?

A. That was a memorandum for the file and also a report. Call it whatever you want. It wasn't addressed to anybody. I am trying to be specific. I am not trying to split hairs.

500 Q. I understand, but I think your answer would be yes there, that is one of those reports?

A. It would be a report, yes."

By Mr. McConnell: I want to offer with this deposition the documents which have been marked for identification.

By the Court: Are these the documents? Are these the same?

By Mr. McConnell: I want to offer Soo-1, Soo-2 and Soo-4.

By the Court: May I have them, please, again, all of them?

By Mr. Thompson: Just a minute, please.

By Mr. McConnell: It is Soo-2, -3 and -4 that they are marked.

By Mr. Thompson: I suppose you are referring to what, the index number down here?

By Mr. McConnell: All right, Sullivan Exhibits 2, 3 and 4, the three documents attached.

By Mr. Thompson: They are marked two different ways. You are now referring to Sullivan Exhibit No. 2, for identification, which is the handwritten memorandum.

By Mr. McConnell: And then there is Sullivan Exhibit No. 3 and Sullivan Exhibit No. 4.

501 By the Court: Gentlemen, I can't read that even with my glasses.

By Mr. Thompson: Sullivan Exhibit No. 3 is the—

By the Court: Would you tell me what this one is marked No. 2? What is it?

By Mr. McConnell: That is the memorandum where he has been talking about the meeting.

By the Court: Objection sustained.

By Mr. Thompson: And this here is his written report a couple of days later.

By Mr. McConnell: Before we get to sustaining these objections, can I be heard on this?

By the Court: Certainly, you may be heard at any time.

By Mr. McConnell: All right; let me state this:

By the Court: May I see the third one, please, the other one?

By Mr. Thompson: This is Sullivan Exhibit No. 3, for identification.

By the Court: All right; you may be heard, Mr. McConnell.

By Mr. McConnell: Are you through talking now, Judge Thompson, and may I address the Court?

By Mr. Meserow: I have not made my objection, but go ahead.

502 By Mr. McConnell: I am going to try to sustain the admissibility of these documents, if I may.

By the Court: I will hear you.

By Mr. McConnell: All right.

I want to call the Court's attention to 28 U.S. Code anotated, Section 1732, which provides for the admissibility in evidence of any document as against the world, not as against the party who made it but as against everybody, under what we used to call the old bookkeeping exception to the hearsay rule. That was the common law exception to it, but now it has been codified by statute in the federal courts, and it says, and I am quoting from the statute:

> "A writing made as a record, an act, a transaction, occurrence or event made in the regular course of business is admissible."

I want to cite in support of that rule a decision in 1943 of the Circuit Court of Appeals for the Third Circuit in the case of Pollack against Metropolitan Life Insurance Company, 138 Fed. 2nd., 123, and I also want to cite—

Well, that case holds that a third person who wasn't a party to the suit, who had no interest in the suit at all,

and this is a party who is not a defendant to the
503 suit, where the record was made there in the regular course of business, that it was binding against everybody, the whole world, that it was not hearsay but was a well defined exception to the hearsay rule.

In the case, a recent case in 1956 in the Court of Appeals for the Second Circuit, in the case of Smith against Baird, it was held that it was reversible error to exclude, under the Federal Statute, memoranda prepared by a non-party banker as to what transpired at a luncheon meeting he had with defendants, where he reported and

made notes and memorandum of what was said.

504 Here we have a report made, and I am not going to describe it. The Court can look at it, but it speaks

for itself as to this man's reporting as to what took place and what the concensus of opinion was of the people who were there dealing with the express problem here of who should have this transfer contract.

One of the issues of public convenience, it seems to me, or public injury, must be, and it must be one of the issues is as to whether or not the transfer service was changed over from some legitimate reason, better service or better rates or something of the kind, or whether it was changed over arbitrarily and against the concensus of opinion that it was no better than what was already being offered by the Parmelee Company.

Certainly, that is squarely within this issue. It isn't a conspiracy issue. It is squarely within the issue that your Honor has undertaken to try, and here is a meeting, a concensus of which is defendants take the position that Parmelee should have the contract and so report in ordinary due course of business, and that is what it is offered for, and I have laid the foundation that he did have no personal interest in it at all, that he was doing it in
505 the regular course of business, that he was making a report to his superiors of what he heard, of what took place, what transpired at this meeting of this group of railroads who are parties to this contract.

It seems to me it is clearly admissible under the bookkeeping exception to the hearsay rule.

By the Court: The objection will be sustained, and they may be excluded. There is a statement by someone, not a party, to someone who is not a party by that someone who doesn't even know who was present who doesn't know who was present or what was said and who said it. The objection will be sustained.

By Mr. Meserow: That is 2, 3 and 4.

By Mr. McConnell: How could he report like that? He says he was there and he gives a whole reporting of the meeting, your Honor.

By Mr. Keating: I object to Mr. McConnell continuing arguing with you, your Honor, in the presence of the jury.

By the Court: I will take care of myself, Counsel; don't worry.

By Mr. McConnell: We will have them marked here for identification.

By the Court: I thought they had been marked. They are attached to the exhibit. They may have been
506 identified and marked.

By Mr. McConnell: I will ask that the court reporter mark this first document as Plaintiff's Exhibit No. 11, for identification, the second document as Plaintiff's Exhibit No. 12, for identification, and the third document as Plaintiff's Exhibit No. 13, for identification.

(And thereupon said documents were marked Plaintiff's Exhibits 11, 12 and 13 for identification.)

By Mr. McConnell: And I reoffer these documents, if the Court please, as they have now been marked as Plaintiff's Exhibits 11, 12 and 13, for identification.

By Mr. Thompson: We move to strike all the testimony of Mr. Sullivan as immaterial to any issue in this case.

By the Court: The offer will be refused, and the documents will be rejected, and the transcript testimony will not be stricken.

By Mr. Freeman: In attempting to proceed with some efficiency, I thought I would read the deposition of Mr. Howard E. Simpson, who is the president of the Baltimore and Ohio Railroad. He was the president in 1955. He still is. He is located in Baltimore.

If this trial had taken a different trend we would have called him personally, and he would have been pro-
507 duced, but I think we can proceed with this and save him some inconvenience by reading his deposition.

This was a deposition taken of Mr. Howard E. Simpson under Rule 30 of the Federal Rules of Civil Procedure, in Baltimore at his offices on February 11, 1957, before Paul Dwyer, a notary public in Maryland.

"HOWARD E. SIMPSON was first duly sworn and was examined as follows:

Direct Examination by Mr. Stevens.

Q. Mr. Simpson, state your name, please.

A. Howard E. Simpson.

Q. And your occupation?

A. President, Baltimore and Ohio Railroad.

508 Q. And how long have you held that position?

A. Since September 1, 1953.

Q. Are you also a director of the Baltimore and Ohio?

A. Under our by-laws I am not a director, although I have the privilege of voting in case of a tie. Our charter calls for a president and 12 directors.

Q. You do attend directors' meetings, though, I take it?

A. I do.

Q. And you are a defendant in this case?

A. That is true.

Q. Have you read the complaint?

A. Yes.

Q. Have you read the answer which was filed on your behalf?

A. The two affidavits that I filed?

Q. No, I mean the answer filed on behalf of the Baltimore and Ohio Railroad and yourself as defendants in this cause.

A. Yes.

Q. Would you identify for me the two affidavits that you just referred to?

A. One was dated November 11, 1955 and the other was December 6, 1955.

Q. Referring to the December 6 affidavit, for whom 509 was that prepared?

A. Howard E. Simpson.

Q. No, I mean for whom was it prepared? I mean what use did you make of that affidavit?

A. —"

By Mr. Thompson: Now, if the Court please. Just a minute. We object to the question as immaterial and calling for an answer which your Honor already excluded by pre-trial rulings.

By the Court: Will you read the question, please, Mr. Freeman, again, and the answer?

By Mr. Freeman: Yes, and I would like to talk about the pre-trial rulings for a moment.

The question was: "For whom was the affidavit prepared? I mean, what use did you make of that affidavit?"

Then the objetcion was made. Now with respect to your Honor's pre-trial rulings, a memorandum was entered with respect to certain documents that were numbered and described in various motions but not submitted to your Honor.

In the course of argument on that memorandum, 510 you did make certain statements limiting the effect of that memorandum, and then in an order that you entered on March 10, 1960, you said, "It is hereby ordered that the rulings made in the memorandum dated December 4, 1959 in so far as they are not specifically changed by the Court's statements hereinabove—"

And I assume that means in the discussion on January 6.

> ". . shall stand and shall govern the tender of the subject documents at the trial of this cause, and the said memorandum together with this shall be filed and entered instanter as an order of this Court."

Now, among the statements that were made by your Honor, very clearly and very specifically pursuant to my discussion with you here on January 6th, was that any document that was an admission against interest of one of the defendants would clearly be admissible and you would receive it, and to that extent you would modify your memorandum.

By the Court: I still so hold.

511 By Mr. Freeman: And these affidavits are affidavits of a defendant, Howard E. Simpson, and they are being offered, as soon as I identify them, as admissions against interest of Mr. Simpson.

By Mr. Thompson: We ask the Court to examine the documents, and he will find that they are not admissions against interest, and they do come clearly within the rulings of excluded documents, without any question.

By Mr. Freeman: There is no such legal ruling. If what Mr. Thompson means is the mistaken ruling—

By The Court: May I see them, please?

By Mr. Freeman: Yes.

By The Court: The objection will be sustained to these documents, not on the theory that they are inadmissible under my ruling. They will be admissible if and when we get to the issue of the conspiracy, but they have no bearing on this issue and are excluded.

By Mr. Freeman: I was trying to identify—

By Mr. McConnell: Have you marked them?

By Mr. Freeman: I will mark them in a minute, Mr. McConnell. The question was—

512 By The Court: By these documents I mean the two affidavits dealing with Hugh Cross.

By Mr. Freeman: Yes, but the question that was presented to which an objection was made was, for what purpose were these affidavits prepared, and I think I am

entitled to at least lay the groundwork for the exclusion that you are ultimately making.

By Mr. Thompson: I will show your Honor the answer that was made, which of course is clearly—

By The Court: They speak for themselves. Objection will be sustained.

By Mr. Freeman: All right. Then I will leave out the few questions and answers.

Let me mark them now. I would like to have marked as Plaintiff's Exhibit 14 for identification this affidavit of Mr. Howard E. Simpson, executed November 11, 1955, and as Plaintiff's Exhibit 15, this affidavit of Mr. Howard E. Simpson, executed on December 6, 1955.

(Said documents were marked, respectively, as Plaintiff's Exhibits 14 and 15 for identificattion.)

513 By Mr. Freeman: I will later, in accordance with out truncated procedure, make an offer of proof of these documents that have been rejected.

Then I read further on page 4:

514 "Q. Mr. Simpson, during the last few days, have you had an opportunity to refresh your recollection as to the events during 1955 pertaining to this transfer situation in Chicago?

A. I did, to the best of my recollection, turn over in my memory what transpired.

Q. So if I refer to, say, the May 19th meeting or the June 3rd meeting, would you know what I was talking about?

A. I would. You mean based on Mr. Cross' calls to me?

Q. Well, specifically, I had in mind the meeting of the Committee of Six Railroads in Chicago. Did you make any attempt to review the activities of that committee at all?

A. Only based on verbal reports that were given me by our representatives who attended those meetings.

Q. I mean, during the last few days, have you made—

A. No.

Q. Any effort to review what that committee did?

A. I have not.

Q. Did you review the transcript of Mr. Cross' testimony before the Senate?

A. I did not."

By Mr. Meserow: I object to the question and
515 the answer, if the Court please, as not being material to the issue involved in this case.

By The Court: Objection sustained. The answer may be stricken.

By Mr. Freeman: Well, the next question I assume would fall in the same category:

"Q. Or his deposition in this cause.

A. I did not.

Q. You did review your affidavits, however?

A. That is all.

Q. Did you also review your diary which I think you have with you today?

A. Yes, we checked over some of those dates. I don't think we ought to refer to that as a diary, Mr. Stevens. That is just a memorandum of appointments. It is not one hundred percent accurate as to all the appointments I may have had on any specific date.

Q. Is there another document which is more accurate?

A. No, that is just the office memorandum to keep me up to date on advance appointments.

Q. Mr. Simpson, are you familiar with the fact that prior to June 15, 1955, Mr. Nelson of your Chicago office regularly prepared reports on the meetings of
516 the committee of six railroads in connection with the transfer situation?

A. I would have no direct knowledge of it because that is an interdepartmental memorandum between the traffic people, and they had full authority to proceed with any negotiations that were going on in connection with the transfer of passengers and baggage in Chicago.

Q. Would it true that such memoranda as Mr. Nelson did prepare, and I believe over Mr. Coleman's name, those were not seen by you?

A. They were not.

Q. And in the normal course of events, they would not be routed across your desk?

A. Exactly not.

Q. So that it would be true that to the best of your recollection, you did not see any of those memoranda prepared by Mr. Nelson prior to June 15?

A. That is a correct statement, or after June 15.

Q. Mr. Simpson, have you seen the original of a document dated April 11, 1955, which has previously been identified as Nelson Exhibit 6 for identification, and which I will now hand you?"

By Mr. Freeman: I would like to have this docu-
517 ment marked for the purpose of identification as Plaintiff's Exhibit 16. It consists of a four-page document coded as B&O No. 63 to 66, dated April 11, 1955, from Mr. Phipps, Jr., to Mr. H. E. Simpson, subject Parmelee transfer at Chicago.

(Thereupon said document was marked Plaintiff's Exhibit 16 for identification.)

By Mr. Freeman: I will proceed with the deposition, and then offer it:

"Mr. Stevens: May I have the original of that, please?"

By Mr. Freeman: Then there was a discussion off the record.

(Continuing reading):

"The Witness: Yes, I have a recollection of reading that memorandum.

Mr. Stevens: Now I would like your counsel to give us the original of that item, please."

By Mr. Freeman: Then Mr. Walker, representing the B&O Railroad said:

"Mr. Walker: We can't find the original. After Mr. Simpson noted that, it went back upstairs to Mr. Whittington's office. Where it went from there, we don't know, or where Mr. Whittington's file clerk put it, we don't know.

518 The Witness: See, when I get an original of that kind from Mr. Phipps, head of the traffic department, I read it, note it 'H.E.S..', and back it goes to the original sender.

By Mr. Stevens:

Q. Do you normally put the date on that you note it?

A. Yes. It is usually anywhere from three hours to seventy-two hours later, whether I am in Baltimore or whether I am out on the road.

519 Q. Do you know if you read this document from three hours to 72 hours after it was sent to you?

A. Yes, sometime in that period.

Q. So you would say you read this document sometime between April 11 and April 14?

A. Correct.

Q. Mr. Simpson, I believe your counsel accepted the service of a subpoena on your behalf which would call for the original of this document among others. Now may I ask you—you may ask your counsel, of course, if necessary—whether an effort was made to locate the original of this document?"

By Mr. Freeman: His counsel added: "An effort was made."

By Mr. Freeman: (Reading)

"Q. And is it in the file of the Baltimore and Ohio Railroad, to the best of your knowledge?

A. I couldn't say to the best of my knowledge where it would be. After I note it and it leaves my desk, it may pass through half a dozen hands. What would happen then, I don't know.

Q. You don't know what the normal ultimate destination of a document such as this would be?

A. I do not.

Q. It would not be maintained in the file in your
520 office?

A. Well, if it was there, I suggested to our counsel, Mr. Walker, when he came down and asked for my files in the president's office in connection with the transfer matter, to see our chief clerk and secure all the information and data we had in the president's office.

Q. Was there a file maintained in the president's office in connection with the transfer matter in general?

A. The only file that we have is the one we just turned over to Mr. Freeman. See, memorandums of this kind, when they come in, after I see them, and get the gist of what is in them and get all the satisfactory information I want out of it, why, I just note it and return it because there is nothing conclusive about it. It is just a memorandum of information and progress.

Q. Did you give this document to Mr. Cross?

A. I did not. Emphatically not.

Q. Did you show it to Mr. Cross?

A. I did not; emphatically not.

Q. But it has been mislaid apparently?

A. Apparently, if they can't locate it.

Q. Other than this file which you have handed to
521 Mr. Freeman, and we will identify some of the papers later, is it correct that there was no file in the presi-

dent's office pertaining to the transfer matter?

A. That is correct.

Q. Mr. Simpson, who if anyone in the B&O organization kept you informed on the details of the negotiations in Chicago pertaining to the transfer matter during 1955?

A. Why, generally Mr. Whittington, who in turn reports to Mr. Phipps, and most of the information along those lines was a verbal discussion with Mr. Whittington, either over the intercommunication box or on the road.

Q. Did you have any such verbal discussions with Mr. Phipps?

A. Yes, because he is the superior officer of Mr. Whittington but has little or no knowledge of passenger matters, and if I wanted to get the real pertinent facts about the transfer case, I would talk to the general passenger traffic manager, Mr. Whittington.

Q. Other than this letter of April 11, 1955, which is prepared over the signature of Mr. Phipps, did you receive any written reports from Mr. Phipps to the best of your recollection?

A. No, not that I recall other than that.

522 Q. Do you recall any specific oral report which Mr. Phipps made to you on the details of the transfer negotiations?"

By Mr. Freeman: The question is repeated, and then the answer:

By Mr. Freeman: (Reading)

"A. No, I do not. I think that there was another report, Mr. Stevens, after that April 11th one, sometime after the June 3rd meeting.

Q. Did you receive any oral reports from Mr. Whittington prior to the time that you received this April 11th memorandum in which Mr. Whittington described the details of the negotiations to you?

A. Mr. Whittington did discuss verbally with me the transfer situation in Chicago to the effect that the Keeshin or the Parmelee contract went out sometime in 1955, and the passenger committee was giving study to the further operations of passenger and baggage transfer through the City of Chicago.

Q. Do you recall where this statement was made by Mr. Whittington to you?

A. Oh, somewhere on the Baltimore and Ohio property. It could have been in the office or on the street or on the train.

523 Q. It wasn't in any formal session called for the specific purpose of discussing that subject matter?

A. None whatsoever because when matters of this kind are in the negotiating form, I don't receive a report until they are really down to the short strokes, and they are ready to make some kind of an arrangement.

Q. Did you also talk to him on occasion over the communication box on this subject?

A. Well, I could have, but I don't remember any specific conversations.

Q. Did you request Mr. Whittington to prepare or to have someone on his staff prepare the report which is dated April 11, 1955?

A. I personally asked Whittington to bring me up to date on the transfer of passengers and baggage through Chicago which was the April 11th letter.

Q. And prior to that time you had not been reading Mr. Nelson's reports, I take it?

A. I had not.

Q. So that this would be the first report which you had had on the details of the negotiations?

A. It was.

Q. Have you seen Mr. Cross since he resigned his position with the Commission?

524 A. I have not.

Q. Have you talked to him since then?

A. I have not. The only time I saw Mr. Cross was on April 23, 1955 to date.

Q. My question just related to since he resigned.

A. Well, that was away back in October or November.

Q. When you did see Mr. Cross prior to his resignation, how did you address him?

A. Prior to his resignation, Commissioner.

Q. You didn't call him by his first name?

A. No, I didn't know him personally or intimately."

525 By Mr. Thompson: We object to all this as immaterial to the issue before the Court.

By the Court: Objection sustained on the general ground that it hasn't any bearing on the issue.

By Mr. Freeman: (Continuing reading)

"Q. Do you recall when you first met him?

A. Oh, I imagine when he first went on the Commission."

By Mr. Thompson: The next number of questions are all along the same line.

By Mr. Freeman: I assume the same ruling would apply.

By the Court: The same ruling all along the line.

By Mr. Freeman: The answer:

"A. Oh, I imagine when he first went on the Commission, whenever that was, 1949 or 1950, just like we meet all the newly appointed commissioners. We make it a practice to go in and pay a courtesy call.

Q. But in any event, you didn't know him before he was on the commission?

A. I did not, no."

By Mr. Thompson: All this is the same thing.
526 There is no use reading matter that the Court has ruled improper.

By the Court: The same ruling.

By Mr. Freeman: I am going to leave some material, but not on Mr. Thompson's suggestion—

By Mr. McConnell: I think you should read it and let the Court rule.

By Mr. Freeman: (Continuing reading)

"Q. Are you a director of the Association of American Railroads?

A. I am, since 1953; better put that in there.

Q. I was going to ask how long you had been a director.

A. September 1953.

Q. When did the Association regularly meet, that is the board of directors of the Association?

A. The last Friday in the month with the exception of the month of July, I think it is, July or August, when they turn out for vacations.

Q. Do they normally meet in Washington?

A. They do.

Q. Did you attend the meeting of the board of directors of the AAR on Friday, May 27, 1955?"

527 By Mr. Meserow: I am going to object to these questions, your Honor, as not being material to the public injury at all, about the Association of American Railroads meeting.

By the Court: I don't know.

By Mr. Meserow: I was at the deposition. I know what is coming.

By the Court: I will reserve my ruling.

By Mr. Freeman: (Continuing reading)

"A. The only way I could find out is one of these

books," and then he looked at one of the books and said, "Yes."

Q. Do you recall if after that meeting you called on any Commissioner of the Interstate Commerce Commission?

A. No, I did not. I came right back to Baltimore on the 1:30 train to get ready to leave for White Sulphur Springs that night.

Q. Did you attend a meeting of the board of directors of AAR in April, I believe April 28th—April 29, I am sorry.

A. Yes, I did.

Q. Did you call on any members of the Interstate Commerce Commission after that meeting?

528 A. No.

Q. Did you attend the meeting of March 25, 1955?

A. No, I was in Florida.

Q. Mr. Simpson, have you on occasion since you have been president of the Baltimore and Ohio Railroad attended formal sessions of the Interstate Commerce Commission, and I intend to include formal conferences or actual hearings, any formal matters before the Commission in Washington?

A. Well, that is a very odd question. What do you mean by formal?

Q. Well, have you ever testified in Washington before the Interstate Commerce Commission?

A. Yes, but they aren't formal meetings. They are public hearings.

Q. I did not mean to exclude public hearings.

A. Oh, yes, I have testified for the Commission in ex parte freight rate cases.

Q. Have you also participated in conferences with commissioners at which the Baltimore and Ohio was

represented by an attorney, an attorney or attorneys, and the Commission was represented by attorneys?

A. Yes, I have.

Q. Did you attend such a conference in 1955 in
529 connection with the financing that the Baltimore and Ohio was undertaking?"

By Mr. Meserow: I object to the question and answer as not being material.

By The Court: Objection sustained.

By Mr. Freeman: I will read it subject to the objection:

"A. Yes, we discussed the refinancing program with the Commission"—

By Mr. Thompson: If the Court please, we object to the question and it is sustained, and that ought to take out the answer.

By the Court: Any appearances of any railroad before the Interstate Commerce Commission in any other matter except the question involved here is definitely excluded because it is part of the conspiracy and hasn't any bearing on this issue.

By Mr. Freeman: I am just trying to complete—

By Mr. Thompson: I know what you are trying to do.

By Mr. Freeman: To complete my reading subject to your objection, your Honor.

530 By Mr. Owens: Your Honor, let him read the questions, and when we make the objections, he should not read the answer then, just as though the witness were on the stand and not permitted to answer.

By Mr. Freeman: You have so many instructors.

By The Court: Yes.

By Mr. Freeman: Your Honor, just to change the pace a little, we had marked for the purpose of identification as Plaintiff's Exhibit 16 this four-page memo-

randum of April 11, 1955, which I think your Honor will find upon reading has to do with the very issue that you have in mind, and we would like to offer it in evidence.

531 By Mr. Thompson: I am generally familiar with the document, your Honor, but I just want to glance at it to refresh my recollection.

By Mr. Meserow: I haven't seen it, your Honor, but I am going to object on behalf of my clients as not being binding on them. This is hearsay as to them, and I don't believe it has anything to do with public injury, and therefore it is beyond the issues on trial.

By The Court: I will let Judge Thompson look at it, and let him make his objection.

By Mr. Thompson: Well, I am inclined to think that it is properly receivable in evidence as to the Baltimore and Ohio Railroad.

By the Court: That is how I feel about it. It goes to the negotiations with Parmelee and their proposal, and has a bearing or may have a bearing or could have a bearing on the issue involved.

By Mr. Thompson: So far as the Baltimore and Ohio is concerned?

532 By The Court: That is right.

By Mr. Freeman: Mr. Thompson has left me breathless. That is a shocking statement that he is willing to admit.

By Mr. Thompson: What is shocking?

By Mr. Freeman: I would like to read to the jury portions of this Plaintiff's Exhibit No. 16.

By The Court: As to the admissibility, Judge Thompson, if you didn't hear it.

He wanted to know what was shocking.

By Mr. Thompson: Your Honor, I didn't want to shock anybody.

By Mr. Freeman: That is dated April 11, 1955, addressed to Mr. H. E. Simpson I will not read the entire memorandum—

By Mr. Meserow: Who wrote the memorandum?

By Mr. Freeman: I don't think counsel should be constantly carrying on a colloquy with me. If he has an objection, make it to the Court.

(Continuing reading):

"Your inquiry of Mr. Whittington concerning the status of the Parmelee transfer of passengers and baggage
533 at Chicago.

In 1942 the 75 cents charge of Parmelee for transfer of passengers and baggage at Chicago was increased to 85 cents, and after the war the charge was successively increased to $1.00, $1.12, $1.20, and on January 1 this year to $1.22. In fact, each time Parmelee commenced wage negotiations with their employees they have also begun negotiations with the railroads for an increase in the charge. Another factor has been the decline in volume of traffic in recent years and the inability of Parmelee to make commensurate reductions in their expenses.

The general question of the cost of transferring passengers and baggage between stations at Chicago has been under almost constant survey by the committee of Terminal Lines in an effort to see what could be done to reduce the cost to the railroads. These surveys have included not only detailed studies of the Parmelee service for both passengers and checked baggage, but also formal inquiry has been directed to all other companies in the Chicago area which could possibly perform either the passenge or the baggage transfer service, asking that they submit bids. The Gray Line, Chicago Transit
534 Company, Willett Coach Lines, Hertz and others have examined the passenger transfer, but have been

unable to come up with any proposal that would be attractive to the railroads.

In addition, the Railway Express Agency, the contract P&D"—

By Mr. Freeman: I suppose that means— well, I don't know what it means.

(Continuing reading):

"—P&D freight carriers and others have studied the baggage transfer, but none have submitted proposals which the railroads could consider. The only way the Railway Express Agency would handle the baggage would be on a cost plus basis.

The rail lines are transferred between stations at Chicago approximately one and a half million passengers annually. Checked baggage transferred totals about 90,000 pieces. The competitive nature of better than 90 percent of the traffic moving through Chicago has resulted in the railroads absorbing the transfer charge except in very few instances on nearby points of origin or destination. For our railroad our Parmelee bills are currently averaging about $5,000 a month, and this is slightly lower than in previous years, because of the gradual decline in traffic.

535 During the past year considerable study has been given to the possibility of generally adding the transfer into the through fare paid by the passenger, but because of the competitive situation, a majority of the lines refuse to do this. Another proposal was to exempt the more important competitive territory and add the charge elsewhere. In checking this we found that if we exempted points on the New York-Washington line, plus Pittsburgh, Akron and Youngstown, where we have competition, better than 90 percent of our traffic was from and to such points and the situation would be little different from that which now exists.

Another suggestion was to add a 50-cent terminal charge to all fares via Chicago to help —"

By Mr. Freeman: I will forget that paragraph.

536 By Mr. Freeman: (Reading)

"Our present understanding with Parmelee expires June 30, 1955. We do not now have a formal contract, but the understanding between Parmelee and the railroads are covered by correspondence only. However, Parmelee has now asked for a formal contract for five years with the charge to the railroads tied to increases in wages of Parmelee and decreases in volume of the traffic as indicated by the following items suggested by Parmelee for consideration by the railroads.

"1. That the railroads, by written agreement, will continue with our services until December, 1961.

"2. That commencing with July 1, 1956, an adjustment of the coupon of one cent for each increase or decrease of three cents per hour in wages of the driver employees and that such adjustments shall continue yearly thereafter until the expiration of this contract.

"3. That commencing with July 1, 1956, and yearly thereafter on July 1, the price of the coupon will be increased one cent for each one per cent decrease in the number of coupons received by Parmelee during the

537 base period, and the price of the coupon will be decreased one cent for each one per cent increase in the number of coupons received by Parmelee during the base period.

"4. That the basis for such computation should be established by the number of coupons received during the calendar year of 1954. In computing the total number of coupons the full fares shall be computed as one, and half fares computed as one-half, and the furloughees shall be computed eighty-five one hundred twentieth.

"5. That the baggage at all depots which is to be transferred by Parmelee shall be sorted and manifested by the railroads in triplicate.

"6. That Parmelee will assume any increases in cost of labor between July 1, 1955 and June 30, 1956.

"7. That Parmelee will assume any loss of revenue through the reduction in the number of coupons received between July 1, 1955 and June 30, 1956.

"8. That the present coupon rate will be reduced from $1.22 to $1.20 as of July 1, 1955.

"9. That the charges for all other services will remain the same.

"The above proposal by Parmelee has not been 538 formally submitted to the Chicago Terminal Lines, but has been discussed with the Chicago sub-committee handling the transfer survey. The sub-committee, on which we are represented, has not made its report to the Terminal Lines.

"Parmelee now takes the position that much of this equipment is old and needs replacing with new and larger vehicles for transferring both passengers and baggage, and that only with new and more modern equipment is there any possibility of reducing the cost and providing the type of service the railroads insist on. They say they will be required to spend about $500,000 over a period from six months to a year and can only justify this expenditure if they have a five year contract with the railroads.

"Many of the rail lines will be reluctant to sign a long term contract in view of the various studies which are still made of this situation, and the divergent views of the lines as to what should be done. This will, of course, be considered after a full report of the sub-committee has been received. Our company, however, is in a position where, with no major western lines in Grand Central

Station, practically all of our traffic has to transfer
539 to and from other terminals. Our principal competitor, the Pennsylvania Railroad, is more fortunate in that the Chicago, Burlington & Quincy, Milwaukee, and the Northern Pacific coast service of the Great Northern operates from Union Station without transfer being necessary.

"One suggestion made from time to time is that we discontinue all passenger transfer and let the passengers use regular taxi cabs at their own expense, but arrange for separate transfer of checked baggage. The difficulty with this is that many of the transfers are for close connections, and during inclement weather taxi cab service just would not be available, while today Parmelee assumes responsibility for this service and generally does a good job.

"Considering our company's competitive situation, we generally feel a definite transfer arrangement of the type now effective is desirable, but we are currently awaiting the full report of the sub-committee, after which the entire situation will be considered by all the Terminal Lines."

540 Now I go on with Mr. Simpson's deposition, and I will omit some references to the Interstate Commerce Commission and various meetings that he had, as a matter of voluntary choice.

By Mr. Thompson: What page?

By Mr. Freeman: Just as soon as I find it, Mr. Thompson.

I will start at the top of Page 20, and the witness is talking about meetings with various members of the finance committee.

The question:

"Q. And Commissioner Cross also, is that correct?"

By Mr. Thompson: We object to that. That is rig[illegible]

on the point he said he wasn't going to read just a second ago. We object to any reference to the hearings before the Interstate Commerce Commission.

By the Court: Objection sustained.

By Mr. Freeman: May I read the questions and answers subject to the objection?

By Mr. Thompson: No.

By Mr. Meserow: I object to that.

By Mr. Freeman: Are they going to answer
541 you each time, Judge?

By Mr. Meserow: Your Honor, this is before the jury, and I object to it.

By the Court: I can't help how they do it.

By Mr. Freeman: I don't understand that.

By the Court: I am standing by the same issue that we have agreed on.

By Mr. McConnell: Your Honor, I don't want to stand silent in the face of that statement. We have agreed on it?

By Mr. Freeman: We haven't agreed to anything.

By Mr. McConnell: We haven't agreed on your Honor's ruling at any stage.

By the Court: No, you are not bound by any agreements on it, and the record shows it.

By Mr. McConnell: I am trying to make it show. I don't know whether I am succeeding.

By the Court: It shows all the objections and rulings.

542 By Mr. Freeman: I will start reading from the middle of Page 24:

"Q. Can you tell me approximately when it was that you became aware of Mr. Keeshin's existence through your freight people?

A. Oh, back in the early thirties — that 'early' ought to be mid-thirties, because I came to Baltimore in '36.

Q. Mr. Simpson, before you received this memorandum of April 11th over Mr. Phipps' name did you know that Keeshin was a bidder for the transfer service in Chicago?

A. I did not.

543 Q. Do you know when you first learned that he was a bidder for the transfer service?

A. Some time after that date.

Q. Do you know who told you that he was a bidder for the transfer service?

A. Mr. Whittington mentioned that the subcommittee on the Chicago lines was considering the Parmelee contract in all its phases, and at that particular time they thought they would ask for bids for other transfer people or other people who could provide the type of service that was being furnished, and if I recall correctly, he mentioned the names of some seventeen different companies, were being considered at one stage of the game.

Q. Was this before or after you received this memorandum of April 11th?

A. To the best of my recollection it was after the April 11 memorandum.

Q. In that conversation he didn't single out any one of the seventeen companies for particular discussion, is that correct?

A. Other than the fact that he thought a lot of them were in there just to get their names on the record, but that it would simmer down with people who were

544 financially strong enough to carry out such a service.

Q. In his first conversation with you, did Mr. Cross mention Mr. Keeshin's name?"

By Mr. Thompson: Objection.

By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Freeman: (Continuing reading):

"Q. Do you know whether the Baltimore and Ohio Railroad prior to 1955 had had any business dealings with John L. Keeshin or the Keeshin Freight Lines, Inc.?"

By Mr. Thompson: We object to that. That is certainly outside of any issue in this case if we were trying all of them. It is immaterial.

By the Court: Objection sustained.

By Mr. Freeman: We will cover this by offers of proof, I assume.

By Mr. Freeman: (Reading)

"Q. What information did you have about business relations between the B&O and Keeshin Freight Lines, Inc.?"

By Mr. Meserow: Same objection.

By the Court: I will let him answer.

545 By Mr. Freeman: (Reading)

"A. None.

Q. Didn't you even know about it in a general way?

A. No, not even in a general way. I just heard the name mentioned, that is all. You understand, I wasn't in the freight end of the business until 1946.

Q. Were you aware of the fact that the B&O had leased the terminal in Chicago to the Keeshin Freight Lines, Inc.?

A. Oh, I knew of that situation, yes, but the details of it I had nothing to do with.

Q. Did you know whether within the B&O Railroad organization that was considered a favorable business relationship or an unfavorable business relationship?

A. I have no opinion on that."

By Mr. Thompson: If the Court please, this all has nothing to do with this lawsuit, and we object to proceeding with that line of examination.

By Mr. Freeman: That is the end of that.

By the Court: I agree, but I can't anticipate a series of questions. Certainly, they may have some bearing as

to how he knew Keeshin, what he knew about him,
546 how he regarded him. I think it may have some propriety there.

By Mr. Thompson: He has already answered, your Honor, that he knows nothing about it.

By the Court: Proceed.

By Mr. McConnell: Your Honor, I think it has something to do on the question of public injury. If a man loses a contract by something extraneous to service, if he is thrown out because of some other influence which brought to bear, it certainly negatives any inference that the jury could draw that the reason the change was made was for the better service.

By the Court: That would make a nice argument before the jury, but it has nothing to do with any reading of the depositions.

By Mr. McConnell: Yes; he is trying to show by this evidence that the reason the Parmelee was thrown out was not because of service or anything else.

By the Court: I said it may have some bearing. I was with you on it.

By Mr. Thompson: It doesn't have anything to do with Parmelee. This is the B&O and Mr. Keeshin's
547 deal.

By Mr. Freeman: (Reading)

"Q. Do you know whether or not the B&O owned stock in the Keeshin Freight Lines, Inc.?

A. To the best of my knowledge, they did not."

By Mr. Thompson: "They never did."

By Mr. Freeman: (Reading)

"Q. Do you know whether they own serial notes issued by Keeshin Freight Lines, Inc.?"

By Mr. Freeman: What was that?

By Mr. Thompson: The answer was "They never did." Not "They did not."

By Mr. Freeman: Yes, "They never did."

By Mr. Freeman: (Reading)

"A. I do not.

Q. Do you know whether or not the B&O lost any money dealing with the Keeshin Freight Lines, Inc.?

A. I do not.

Q. Who in the B&O Railroad would know about such a matter?

A. Well, my predecessor, possibly, Mr. Shumate, would have known about it. He retired on February 1st, 1947. That is ten years ago."

By Mr. Freeman: I will skip the next few questions, and then Mr. Stevens asked to have the reporter mark four papers as Simpson Exhibits 1, 2, 3 and 4, and
548 then he proceeds to identify them on the record.

By the Court: Those are the same four?

By Mr. Freeman: Exhibit No. 1 is the affidavit of November 11, which has been rejected as Plaintiff's Exhibit No. 14. Then there is a copy of a telegram dated November 15, 1955 from H. E. Simpson to Robert Kennedy, counsel for the Senate permanent sub-committee on investigations. That is marked as—

By Mr. Thompson: We object to any such statement. It has been ruled out by the Court.

By the Court: Sustained.

By Mr. Freeman: That was Exhibit No. 2. Simpson Exhibit No. 3 was the affidavit of December 6th, which has been rejected as Plaintiff's Exhibit No. 15. Exhibit No. 4 is a letter from counsel to Washington, and the examination continues:

By Mr. Freeman: (Reading)

"Q. Mr. Simpson, I show you the document which has been marked as Simpson Exhibit 1 for identifica-
549 tion, apparently bearing your signature, and dated November 11, 1955. Is it correct that you signed that document?

A. It is.

Q. And, of course, that was signed under oath?

A. That is right.

Q. Before signing that document, Mr. Simpson, did you review the facts as best you could at the time to which the document refers?

A. I did."

By Mr. Meserow: I object to the questions referring to this document which has been excluded by your Honor.

By Mr. Freeman: It has to do with foundation proof, which I think is important. You are considering these rulings I assume, and if the foundation occurs—

By the Court: I don't see any harm in it. If they have the same irrelevancy to this issue, I will sustain the objection.

By Mr. Freeman: (Reading)

"Q. Did you prepare the document yourself?

A. Counsel prepared it, with my approval."

By Mr. Thompson: I object to reading the rest of these questions.

550 By the Court: If it pertains to exhibits which I excluded, they have no relevancy in this record.

By Mr. McConnell: I don't see how your Honor can rule on evidence that you have not even heard. He has a right to ask the question and then make the objection and you can rule on it.

By Mr. Meserow: Your colleague is too fast on the answers.

By the Court: Gentlemen, please not get into controversies. I will let the jurors go home. It is ten minutes of 5:00. Mum in the word; no talking.

I want to make one more observation. I don't know what reports you may read in the press. I find no fault with the press reports, but they are the reactions of a

reporter who makes them, and they should not influence your judgment in the least.

551 You can understand that, and I would prefer and I wish and I urge that you keep your minds open. I can't admonish you against reading them. I am a strong believer in freedom of the press, but I do want you to keep your minds independent and free and clear from any outside influences, conclusions, or reflections that may be published or broadcast or something of that nature. You understand why. Thank you very much, and have a nice evening.

By Mr. Thompson: If the Court please, this has nothing to do with freedom of the press. It is just as wrong for the jury to be told through a newspaper article something about this lawsuit as it is for me to stop them on the street and tell them. They ought not to read them, and I ask them not to do so.

By the Court: I am not going to amplify my statement. You understand what I have in mind. You have to give this case absolute fairness, independent of what you hear or see anywhere, except on the witness stand

552 and the evidence that I allow to go in as proper, competent, relevant and material evidence, and that which we strike out is as much out as anything that you might have heard, but you should not have. Do you want to make a comment?

By Mr. McConnell: No; I don't want to make any comment. Anything I would say would probably be bad.

By the Court: Good night and have a nice evening.

(Whereupon an adjournment was taken until the following day, Wednesday, April 27, 1960, at the hour of 10:15 o'clock, a.m.)

553 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Wednesday, April 27, 1960,
10:15 o'clock a. m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

554 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

555 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.

(The following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. McConnell: Your Honor, I have an oral argument before the Supreme Court of Illinois. They are having a special argument in a case, in which I represent one of the parties, as part of the inauguration of the new hearing hall out at the University of Chicago. The Court is coming here for the argument Friday morning.

I would like to ask that this be recessed for Friday morning.

By the Court: That this be recessed until Friday morning?

By Mr. McConnell: No, just on Friday morning.

By the Court: I think Mr. Freeman is fully able to take one morning and to go on with some of it, either the presenting of the offer of proof or something
556 else. This is the last week for the jury, and I am trying not to hold them up unduly.

As far as I am concerned, I have no objection, but I have that problem with the jury, and Friday is their last day.

Is that correct, Bob?

By the Clerk: That is right, your Honor.

By the Court: I want to expedite their attendance here as much as I can, and so if you can work it out, fine. Let's go on until tomorrow night. I have to be out at the University of Chicago tomorrow night on the dedication. The entire court is going there. Let's see what progress we make, and see if we can go on Friday with Mr. Freeman.

By Mr. Thompson: The dedication is on Sunday.

By the Court: I beg your pardon?

557 By Mr. Thompson: The dedication is Sunday.

By the Court: Tomorrow night we have a special

meeting at Kirkland Hall. All right; let's go. Bring in the jury. Have we reached the stage now where we are before the jury?

By Mr. Freeman: Yet; we would like the jury.

By the Court: Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. Proceed, gentlemen.

By Mr. Freeman: When we suspended I was reading the deposition of Mr. H. E. Simpson, president of the Baltimore and Ohio Railroad.

I start with the question starting on Page 29, which is as follows:

"H. E. SIMPSON, having been first duly sworn, testified as follows:

Direct Examination (continued).

Q. Now is it correct, Mr. Simpson, that in your first discussion with Commissioner Cross in 1955 on this transfer subject, that you told him that you did not know any of the details?"

By Mr. Thompson: If the Court please, we object 558 to this inquiry, and we object to reading the questions. They are outside the issues that are before the Court and are subjects which your Honor has already excluded by pretrial ruling.

By Mr. Freeman: There is no exclusion of oral testimony in any pretrial ruling.

By the Court: What is the question again, please?

By Mr. Freeman: (Continuing reading);

"Q. Is it correct, Mr. Simpson, that in your first discussion with Commissioner Cross in 1955 on this transfer

subject, that you told him that you did not know any of the details?"

By the Court: The objection will be sustained. It is beyond the pale of this issue.

By Mr. Freeman: I understand, but we take exception to that, and we are trying to make a record.

By the Court: You may make your offer of proof.

By Mr. Freeman: I will make my offer of proof,
559 and I am doing it by asking the questions first, and we will then make one offer of proof.

By the Court: I am sustaining the objection to that on two grounds. First, it is beyond the pale of the issue, and secondly, it certainly is inadmissible as against any other defendants except the railroad company and himself.

By Mr. Freeman: We don't agree with that, but I don't have to argue that any further. The next question is:

"Q. Specifically, did you tell him, 'I did not know any of the details?'"

By the Court: I think we have gone far enough on that. I have indicated a ruling on that conversation. Let's not have a ruling on each question and answer in it.

560 By Mr. Freeman: Very well, sir. I will turn now to page 31 where the question is:

By Mr. Freeman: (Reading)

"Q. Did you subsequently ascertain certain details about the transfer situation which you relayed to Mr. Cross?"

By Mr. Thompson: If the Court please, we object—

By the Court: Same objection; same ruling.

By Mr. Freeman: Then I will eliminate the series of questions that deal with that subject and make an offer of proof.

By Mr. Thompson: If the Court please, the witness is testifying—I mean, Mr. Freeman is testifying by the mere reading of the questions.

By Mr. Freeman: No, I am not. I have a right to make—

By Mr. Thompson: You have already made it. The Court has ruled all this out, and therefore you have got your record made.

By Mr. Freeman: Excuse me, Mr. Thompson. I have a right to form the basis for my offer of proof.

561 By the Court: Proceed.

Did you want to say something, Mr. McConnell?

By Mr. McConnell: Yes, I want to say that this goes to the nature of the service, what the conditions were. There was a discussion there of what was the nature of the service that was being rendered as compared with what would be rendered. It is squarely within the issue that your Honor is trying.

By the Court: The objection will be sustained. It isn't squarely before me at all. It goes specifically and definitely to the conspiracy charge, and I am excluding it, knowingly and emphatically.

By Mr. Freeman: All I am doing is trying to lay the basis for an offer of proof.

By the Court: I have no objection to your making a record. I want the record to show that I don't want this case to go up on my denial of plaintiff of any right to make a record or to exclude anything except what I am excluding legally and properly under the ruling.

562 By Mr. Freeman: Then on page 33:

By Mr. Freeman: (Reading)

"Q. After your meeting in Washington at which Mr. Burgess and you represented the Baltimore and Ohio in conference with the Commissioner, did you call Commissioner Cross at any time to talk about your financing?"

By Mr. Meserow: Same objection.

By The Court: Same objection; same ruling.

By Mr. Freeman: There is a series of questions dealing with that conversation which I will omit.

Then I will turn to page 40:

By Mr. Freeman: (Reading)

"Q. Do you recall on or about Monday, May 23, 1955, which would be right after the May 19 meeting of the Committee of Six in Chicago, that Mr. Whittington—"

By Mr. Freeman: Of the Baltimore and Ohio.

By Mr. Freeman: (Reading)

"Q. —came to your office and gave you a report on the progress of negotiations in Chicago?

A. No, I have no recollection of that particular date and talking to Whittington about any—on the subject of transfer of passengers and baggage.

563 Q. Do you recall any meeting with Mr. Whittington after this April 11th report—"

By Mr. Freeman: Which was read to you yesterday and identified.

By Mr. Freeman: (Reading)

"Q. —in which he brought you up to date on the transfer situation in Chicago?

A. To the best of my recollection anything that Mr. Whittington told me after that April 11th meeting was in substance as I repeated earlier in the cross examination, to the effect that the sub-committee was studying the matter.

Q. Don't you recall, Mr. Simpson, a conversation with Mr. Whittington in which he summarized for you the Parmelee proposal and the Keeshin proposal and gave you his judgment on the two proposals?

A. I have no specific recollection of him telling me other than the two companies had made proposals to the

sub-committee, but what the gist of the proposals were, I have no specific recollection.

564 Q. Well, I am not going to ask you to recall the gist of the proposal, but merely whether or not you recall Mr. Whittington having told you the gist of the proposal.

A. Well, it is something I wouldn't want to say no, and I wouldn't want to say yes. I assume that some time during there he may have mentioned something to me verbally about the progress that was being made in connection with the transfer of passengers and baggage through Chicago.

Q. And giving you a description, or a comparison, I would say, of the two proposals which were then under consideration?

A. No, I can't remember that.

Q. Can you remember him ever mentioning the name Keeshin at any discussion with you on the subject?

A. Well, he—surely he mentioned that Keeshin company was one of the bidders in connection with this transfer along with another company, as I remember, Willett, and as I said previously, some fourteen other companies that were interested in providing the service.

Q. But you don't recall any discussion with Mr. Whittington in which only Keeshin and Parmelee were dis-
565 cussed?

A. Oh, I think somewhere along the line, why, it simmered down to those two companies as the bidders for the service.

Q. Do you recall somewhere along the line Whittington telling you about the bids of those two companies?

A. No, not in dollars and cents or any of the other details.

Q. I would like to show you a book—"

By Mr. Freeman: Mr. Stevens was identifying the book and asked him to look on Page 1. Is this the one—

By Mr. Thompson: Well, read what it says.

By Mr. Freeman: I think I had better.

By Mr. Freeman: (Continuing reading)

"Mr. Stevens: I think, just for the record, we should identify these two appointment books so we will keep them straight. One has the name H. E. Simpson on the first page. Is that the one maintained on your desk, Mr. Simpson?

The Witness: That is right."

By Mr. Freeman: Mr. Stevens had it marked for identification as Exhibit 5, and I would like to have marked 566 for identification here some photostated copies of that book as Plaintiff's Exhibit 17. These photostat copies consist of pages from the April 8 date, April 21, April 23, April 29, May 4, and May 19. In other words, six pages in all.

(Thereupon said documents were marked Plaintiff's Exhibit 17 for identification.)

By Mr. Freeman: Then Mr. Stevens goes on:

"Mr. Stevens: And the other similar red book with the name A. W. Snell,—"

By Mr. Freeman: The witness says:

"The Witness: Snell, assistant to the president."

By Mr. Freeman: Then Mr. Stevens said:

"Mr. Stevens: I would like to have that marked on the inside cover as Simpson Exhibit 6."

By Mr. Freeman: I have some photostatic copies of pages of the Snell diary which I would like to have identified as Plaintiff's Exhibit 18. It consists of pages from

April 21, April 23, April 29, May 4, May 27, September 7, and September 8, seven pages in all.

567 The original diary, I think, is in court. I would like to have the Snell diary so that we can reproduce the page for April 8, which we did not previously reproduce.

By The Court: You may furnish it any time.

By Mr. Freeman: So if we can identify these eight pages as Plaintiff's Exhibit 18, and I will supply the record with a photostatic copy of the April 8 page.

By The Court: You may supply it at any time and it will be so identified.

(Thereupon said documents were marked Plaintiff's Exhibit 18 for identification.)

568 By Mr. Freeman: I will now turn to page 45, Mr. Thompson.

By Mr. Freeman: (Reading)

"Q. Do you recall, Mr. Simpson, receiving a telephone call from Commissioner Cross while you were in New York City on May 25, 1955?"

By Mr. Meserow: Objection.

By The Court: Sustained; same ruling.

By Mr. Freeman: Now there are a series of questions with respect to that telephone call which I will omit pursuant to your Honor's suggestion, but I will make an offer of proof of that.

I will now turn to page 47.

By Mr. Freeman: (Reading)

"Q. You did have an appointment with Commissioner Cross for that day, did you not?"

By Mr. Freeman: The question refers to April 8.

By Mr. Meserow: Same objection.

By The Court: Same ruling.

By Mr. Freeman: There is a series of questions and answers on that one, and I will leave that out.

569 I will be glad to read those pages, Mr. Thompson.

By Mr. Thompson: What pages?

By Mr. Freeman: You liked that last answer. Shall I read on?

By Mr. Meserow: Objection.

By Mr. Thompson: No, it is outside the issues. There is no use wasting time.

By Mr. Freeman: Page 55.

By Mr. Freeman: (Reading)

"Q. Did he—"

By Mr. Freeman: Referring to Cross.

By Mr. Freeman: (Reading)

"Q. —mention the fact that he called Mr. Fred Carpi of the Pennsylvania Railroad that same day?"

By Mr. Meserow: Objection, your Honor.

By The Court: Sustained.

By Mr. Freeman: We will leave out the following. Then on page 56.

By Mr. Freeman: (Reading)

"Q. Do you recall that Mr. Cross telephoned you on May 13, 1955?"

By Mr. Owens: Objection, your Honor.

570 By Mr. Freeman: I will leave the May 13th conversation out.

By Mr. Owens: Your Honor, this procedure is just pointing out the fact that there have been conversations with Mr. Cross. The substance of those is not—

By The Court: I think that has followed for a long time.

By Mr. Owens: And he should not be permitted to go through this record, page by page, and pick out only the references to Mr. Cross, and leave the jury with the im-

pression that that is all that has gone on here. He should be instructed not to do so.

By The Court: Proceed.

By Mr. Freeman: I have a right to lay my foundation for the offer of proof, and I will only offer the answers that are being excluded as my offer of proof, and Mr. Owens has no problem.

By The Court: I will sustain the objection. That is all I can do.

By Mr. Owens: Could you instruct him not to read references to Mr. Cross?

571 By The Court: Mr. Freeman and everybody understands now that any conversation with Mr. Cross, any meetings with Mr. Cross, are not part of the issue before me, and are inadmissible and improper, but I think his purpose is perfectly logical and fair. He is making his record and he wants to make his offer of proof of the answers which I am excluding from the record.

By Mr. Owens: Your Honor, at this time he could make a statement that—

By The Court: Whether he met Hugh Cross once is not a question here, but the question is what was said, if they met.

By Mr. Freeman: And I have got what was said, but he won't let me go into it.

By Mr. Owens: Your Honor, he can make the statement to the Court that there were other conversations or other meetings, and out of the presence of the jury then bring those to your attention and make his offer of proof at that time, if the offer of proof will be accepted.

572 By The Court: That is what I would like to have happen, but it is not happening, and I will let him go on as to the way it was.

By Mr. Freeman: We offered to stipulate with counsel at the beginning, and they refused it.

By The Court: There was the general offer to stipulate, to rely entirely on an offer of proof, and it was rejected, so I have no choice about it. We are going through it page by page.

By Mr. Thompson: If the Court please, I should like to make a statement on behalf of the defendants I represent. We are not only having the question read as to whether a conversation was had, and no answer is permitted to the question because it is outside the issue, but then he is saying there are a lot of other questions relating to this conversation as though any conversation ever took place, without anything in the record to show that there was even a conversation.

By The Court: I agree with you, Judge Thompson,
573 and I will instruct the jury, and I have instructed them before, and I will do so again, that anything that has been stricken by me is not to be regarded by them, and I am not permitting any answers or conversations to go in, and they cannot indulge in any inferences of what might have been said.

By Mr. Thompson: I appreciate that, your Honor, but there is an old saying that when you drive a nail in the barn door and then pull the nail out, the hole is still there, and how the jury can get this out of their heads after it gets in is beyond me.

By The Court: I will use a little putty on it. Let's go.

By Mr. McConnell: This hole should be there.

By Mr. Freeman: Page 58. (Continuing reading):

"Q. Well, now, Mr. Simpson, you did call him back on two or three occasions, did you not?"

By Mr. Freeman: Meaning Cross.

574 By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Freeman: The question on Page 61:

"Q. But he did", meaning Cross, "make subsequent inquiries about the matter to you, is that correct?"

By Mr. Meserow: I object, your Honor.

By Mr. Thompson: Objection.

By the Court: Sustained.

By Mr. Meserow: I guess it doesn't do any good for your Honor to instruct counsel. He is going through the pages and picking out these questions deliberately which are objectionable.

By Mr. Freeman: I have skipped a whole series of questions which bear on the same issue in an effort to save time and not ask the questions.

By the Court: I have explained my position and reactions to it. I am going ahead with it as we are doing.

By Mr. Freeman: (Continuing reading)

"Q. In those subsequent telephone conversations, did he discuss any subject except the transfer matter?"

By Mr. Meserow: Objection.

575 By the Court: Objection sustained.

By Mr. Freeman: (Continuing reading)

"Q. Did you ever receive any calls from other commissioners on those subjects?"

By Mr. Thompson: Objection.

By the Court: Objection sustained.

By Mr. Freeman: On Page 62. (Continuing)

"Q. Did he . . ." Cross —

By Mr. Owens: Objection to the interpolation.

By Mr. Freeman: (Continuing)

"Q. Did he ever state that he was very much interested in seeing that J. L. Keeshin got the new contract?"

By Mr. Meserow: Objection.

By the Court: Sustained.

By Mr. Thompson: Let's have the answer as far as I am concerned. I would like to try this whole lawsuit.

We have nothing at all to apologize for if we get all the facts, but to get it this way is impossible for anybody to know what is going on.

By Mr. Freeman: We agree.

By Mr. McConnell: You are doing your best to
576 keep it out. You have been objecting all the way through. It isn't just your co-counsel. You have been doing just as much objecting as anybody else.

By Mr. Thompson: I am only doing what the Court has instructed us to do.

By Mr. Freeman: (Continuing)

"Q. What was the principal interest of the B&O Railroad?

A. To hold down the cost of the operation in the City of Chicago just the same as it is in any other matter as we are involved contrarywise. You further understand that the railroads were under great pressure by the shipping public because of the high costs and deficits of operating passenger service which they contended contributed to the railroads' constant request for increases in freight rates, and if the railroads would diligently hold down their passenger expenses they wouldn't be in need of money constantly to take care of their operation, so it was always the responsibility of the railroad presidents with the passenger traffic officers to hold down expenses.

577 Q. In general, Mr. Simpson, was that the sum and substance of the instructions which you gave your passenger people?

A. It was, with full authority to act for the B&O railroad, realizing that Mr. Whittington who succeeded me as general passenger traffic manager was familiar with the transfer of passengers and baggage through Chicago and he was fully competent in entering into negotiations and making a contract which, in his opinion, would be satisfactory to the B&O.

Q. Do you recall a telephone conversation with Mr. Cross on June 8, 1955 in which Mr. Cross mentioned the fact that Keeshin was going to be supplying the transfer service after October 1?"

By Mr. Meserow: Objection.

By the Court: One second. I want to get one citation, and I will read it to you and ask you not to do it again.

Get me that citation where it is obvious.

I am reading from the case of Phipps —

By Mr. Freeman: Should this be outside the presence of the jury?

578 By the Court: No. This is not going to be prejudicial to anybody.

It is the case of Phipps *v.* Nederlandsche Amerikaansche Stoomvart, Maats, 259 Federal Reporter, 2nd Series, page 143, where it states, and I am reading on page 146 as follows:

"Thus upon its face the proffered evidence was incompetent to support the theory for which it was offered, and the court may reject it."

It is becoming obvious that the repetition of question after question about the matter on which the Court has ruled is not competent and proper as distinguished from an offer of proof. It ought not to be hammered and repeated before the jury time and time again, and I would appreciate it very much if you would make your offer of proof on it, and all the conversations, if any —

By Mr. Freeman: Excuse me. I have only this problem, as Mr. McConnell has well stated it. The statute controlling in this regard is Section — Rule 43(b) of the Federal Rules of Civil Procedure.

579 By the Court: That is where I got this from.

By Mr. Freeman: It requires we do present a witness, and we do go through this deposition or that we do it in person and we ask a question which may be

objected to, and it is sustained, and then we offer to prove what the witness would say pursuant to that question.

We are not going through every question and getting an objection. We are trying to shorten it by saying, "Here is a series of questions we will ask," or "Here is a subject matter we will cover."

You will also recall that when we sought to make an offer of proof, for example in the case of Mr. Feucht, who later took the stand, Mr. Thompson objected as did Mr. Owens and Mr. Meserow and Mr. Keating, to the form of the offer. We didn't have a witness there. We were not asking him a question to which there could be an objection.

We find ourselves in an uncomfortable position of both being accused of bad form in making the offer of proof and being accused of bad form when we ask the 580 question. I think we have to try to protect our record by asking the question.

By the Court: I will not object, and I will permit your form of offer of proof in the absence of the jury by overruling their objections to the form. You have had the witness on the stand, or you have these depositions, and you have identified the witness, and you have asked questions about conversations and about issues not before this jury.

The same ruling prevails on all of the same questions, and if you ask him a million times, it will be the same ruling, and it becomes obvious to the jury and to the Court that you are merely repeating something that the Court has ruled on.

By Mr. McConnell: Their objection is right. They have made a sound objection to proceeding without the witness or without the deposition, and we have to make

a record, and your rulings are going to be reviewed.

581 By the Court: All right, but the witness has been on the stand and depositions are being read.

By Mr. McConnell: Now you are trying to tell us we can't ask these questions. We have a right to ask these questions, and until we are stopped from asking these questions we are going to ask them, because it is in our prerogative in doing it.

By the Court: I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.

By Mr. McConnell: We have a right to ask them.

By the Court: You can offer proof on it.

By Mr. McConnell: We have a right to ask questions which we offer on this issue, and your Honor can sustain their objections to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us.

582 By the Court: Well, I will stop you now, and I don't appreciate threats. That is the law and my judgment, and I can only rule upon it as I see it, and I forbid you from asking, repeating the same questions over and over again upon which I have ruled specifically a hundred times that it is not admissible and is improper under this issue.

By Mr. Freeman: Your Honor, may I make one other observation? The conversation or alleged conversations between Cross and Simpson have been covered here, but we do propose to make offers or proof of conversations that Mr. Cross had with other defendants, and we should not be prevented from making the foundation for that offer.

By the Court: This does not bar you from making an offer of proof in the absence of the jury.

By Mr. Freeman: I assume you are merely barring me from asking questions that have to do with Cross and Simpson?

By the Court: The same repetitious questions over
583 and over again. I am not barring you from making the offer. You will make all the offer you want but not in the presence of the jury, because the issue before them is limited.

By Mr. Freeman: We are seeking to present evidence within the limits of your ruling.

By the Court: By your offer of proof.

By Mr. Freeman: We are dealing with the public injury problem.

By the Court: Within the issue I will permit you to go as far as the questions will permit.

By Mr. Freeman: We think conspiracy and the fact that the public service of Cross was destroyed by this is a part of the public injury.

By the Court: That is what you think, and make your offer of proof but not in the presence of this jury.

By Mr. Freeman: May we have a recess?

By the Court: Yes, you may have a recess, ten minutes.

By Mr. Freeman: Thank you, sir.

(Thereupon the following further proceedings were
584 had outside the presence and hearing of the jury:)

By the Court: Mr. McConnell, we are not playing to the galleries here. I am ruling upon rules of evidence as I see them, and these are not evidence.

By Mr. McConnell: I am not playing to any galleries.

By the Court: I am not going to have any more of it.

By Mr. McConnell: I am trying to try a lawsuit. I am being prevented from trying it at every stage of it.

By the Court: It doesn't call for insults or abuse.

By Mr. McConnell: I am not making any insults.

By the Court: You certainly do when you say you will have to be dragged out by a sheriff in stopping you from making the proof. I will stop it.

By Mr. McConnell: There comes a time when a lawyer has to stand up and state his client's case.

585 By the Court: And as a gentleman in the bounds of the law.

By Mr. McConnell: We have a right to ask these questions.

By the Court: You have a right to your say, but I have ruled against it, and you may make your record.

By Mr. McConnell: We can't make the record without asking the questions. That is the point.

By the Court: What do you want to say, Mr. Freeman?

By Mr. Freeman: I have nothing further to say.

By the Court: All right; a ten-minute recess.

(Thereupon a short recess was taken, after which the following further proceedings were had herein:)

586 By the Court: All right. Before the jury comes out, I want to read just a little more.

Reading from Federal Rules of Civil Procedure, Rule 43, page 375, 108:

> "Where testimony is excluded by trial court, an offer of proof must be made to preserve question for appeal, if significance of excluded evidence is not obvious."

Now, this is obvious. I have ruled it a million times the same way.

Then it goes on, the same page:

> "If significance of excluded evidence is not obvious, offer of what counsel expects to prove by witness must be made to preserve question on appeal."

Citing 193 Fed. 2d 760.

Then I am going to Civil Procedure, Federal Digest, 31 C, page 2011:

"Where introduction of evidence can only result in a confusion of issues, or inject many new controversial points collateral to the issues, or generates surprise or undue prejudice disproportionate to the usefulness of the evidence, it should not be admitted
587 and such a matter is within the discretion of the trial court."

Citing 193 Fed. 2d. 479.

Then reading from the next page:

"Direction of the orderly presentation of evidence is in the discretion of the trial court."

Citing 177 Fed. 2d. 954.

All right; bring out the jury.

(Whereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By Mr. Freeman: In view of your Honor's ruling, I will not continue the reading of the deposition of Mr. Simpson, but I will seek to cover it in an offer of proof outside the presence of the jury.

However, before I conclude with Mr. Simpson, I would like to offer in evidence as the plaintiff's exhibits those exhibits that have been previously marked as Exhibits 15 and 16, which were Simpson affidavits, and then Exhibit 17, which are the pages from the Simpson diary, and Exhibit 18, which are the pages from the Schnell diary.

Are there any objections?

588 By the Court: Is there an objection?

By Mr. Thompson: Yes. I don't know where the others are that he is offering.

By Mr. Meserow: The Judge has ruled on those affidavits, Exhibits 15 and 16.

By Mr. Thompson: You have already ruled on 15 and 16.

By Mr. Freeman: Has 16 been admitted? Then I will read it to the jury.

By Mr. Meserow: There are two affidavits. They have been denied admission.

By Mr. Freeman: I am sorry.

By Mr. Thompson: They have both been excluded.

By Mr. Freeman: Yes. Exhibits 14 and 15 have already been ruled upon, I am told, so I withdraw that offer, and I just offer Plaintiff's Exhibits 17 and 18, which are the diary pages.

By Mr. Thompson: If the Court please, we object to Plaintiff's Exhibit 17 for identification, first on the ground that the photostatic copy which they are offering in evidence has superimposed on it a slip of paper on which is written "H. E. Simpson diary."

The book that they are referring to is before your Honor. It is in no sense a diary. It is nothing but an appointment book, on which is written appointments,
589 and then scratched out, and some more appointments written on, and so on.

This first page here is so characterized as a diary, whereas it is nothing but an appointment, and an appointment is scratched off of the page, so it shows it didn't make place.

The next page is in respect to some appointments on the face of it in New York, with no reference to anybody that has any connection with this lawsuit.

We object to these documents as immaterial and beyond the issues before the Court and as improperly characterized as a diary.

By Mr. Freeman: Mr. Thompson is correct about this little notation, which my secretary put on, but I can remove it, and I will.

By the Court: May I look at them, please?

By Mr. Freeman: Yes, your Honor.

By Mr. Thompson: You can remove that, of course.

590 By the Court: The objection will be sustained, and they will be excluded.

By Mr. Thompson: That applies also to Plaintiff's Exhibit 18, for identification?

By the Court: Both 17 and 18.

By Mr. Thompson: All right.

By Mr. Freeman: Would counsel supply me with the first page of 18 so we can have the excluded exhibit in the record, a photostatic copy? I will remove this diary reference.

By the Court: That is not the basis for my ruling, whether it is there or not. It has been sufficiently identified as his book by the depositions, but I am ruling it is beyond the pale of the issue.

By Mr. Freeman: I would like now to proceed with the deposition of Mr. Fred G. Gurley, who is a defendant in this cause and a former president of Santa Fe Railroad.

Mr. Gurley's deposition was taken in this cause on Wednesday, May 29, 1957, in the United States Court House in Chicago, Illinois, before Kay Arboit, notary public.

By Mr. Thompson: If the Court please, Mr. Gurley is here in the court room sitting in the second row, and we object to reading his deposition when the witness

591 is available. We ought to have some live testimony in here.

By Mr. Freeman: We will have some live testimony, but we have the right to read this deposition as an adverse witness.

By the Court: I will let you go on with the deposition. Objection overruled.

By Mr. Freeman: The examination was conducted by me. (Reading)

"FRED G. GURLEY, being first duly sworn by notary public Kay Arboit, testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name?

A. My name is F. G. Gurley.

Q. And your residence, please?

A. The business address is 80 East Jackson Boulevard, Chicago.

Q. Do you hold a position with the Atchison, Topeka and Santa Fe Railroad?

A. I do.

Q. What position was that in 1955?

A. President.

592 Q. How long were you president?

A. I was elected president in August of 1944.

Q. You held the position of president until recently?

A. That is correct.

Q. Mr. Gurley, who made the statements to you to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing the Chicago transfer contract?"

By Mr. Owens: Objection.

By the Court: Objection sustained to that line of questioning on Mr. Cross, and you will please refrain from making reference to it, and you may make your offer of proof.

By Mr. Freeman: I would just like to ask one other question with respect to this which is more pointed to that issue.

By Mr. Meserow: Objection, your Honor.

By the Court: Objection sustained.

By Mr. Freeman: On page 2396 there is a series of questions dealing with that same subject which I will refrain from reading, pursuant to your Honor's ruling.

On page 2398, this is not the same.

593 By Mr. Freeman: (Reading)

"Q. Did you advise anybody or tell anyone of these statements that you had heard with respect to Cross' prospective association with Keeshin?"

By Mr. Meserow: Objection, your Honor.

By the Court: Objection sustained.

By Mr. Freeman: On page 2403 and 2404 I make this statement:

By Mr. Freeman: (Reading)

"By Mr. Freeman: Well, let me identify as Gurley Exhibit 1 this typed copy of an affidavit allegedly prepared by Mr. Gurley on November 8, 1955, and, as Gurley Exhibit 2, this typed copy of an alleged affidavit prepared by Mr. Gurley on November 10, 1955."

By Mr. Freeman: I showed the witness the documents.

By Mr. Freeman: (Reading)

"Q. Mr. Gurley, I hand you the documents that have been marked Gurley Exhibits 1 and 2 for identification and, subject to check for accuracy as far as typographical or other errors are concerned, are they copies of the affidavits that you filed with the Senate committee?"

594 By Mr. Meserow: Objection, your Honor, to any reference to the Senate committee, which should be out.

By the Court: Let him finish the question.

By Mr. Freeman: (Reading)

"A. Well, they look familiar. Subject to those qualifications, I would say yes."

595 By the Court: The objection is sustained, and the answer may be stricken.

By Mr. Freeman: May I mark, for the purpose of identification, as Plaintiff's Exhibit No. 19, this affidavit executed—

By Mr. Thompson: Just a minute.

By Mr. Freeman: I have to identify it. This is an affidavit executed November 8 by Fred G. Gurley and previously identified in his deposition as Gurley Exhibit No. 1.

As Plaintiff's Exhibit No. 20, this affidavit executed by Fred G. Gurley on November 10, 1955, and identified in his deposition as Gurley Exhibit No. 2.

As Plaintiff's Exhibit No. 21, this telegram from Robert F. Kennedy, chief counsel, Senate Permanent Subcommittee on Investigations, to Mr. Gurley on November 10, 1955.

As Plaintiff's Exhibit No. 22, this subpoena from the Senate Committee dated November 4, directed to Mr. Fred Gurley.

(Thereupon said documents were marked Plaintiff's Exhibits 19, 20, 21 and 22 for identfication.)

596 By Mr. Freeman: I offer these documents that have been identified as Plaintiff's Exhibits 19, 20, 21, and 22 as Exhibits in evidence with those numbers.

By Mr. Thompson: Of course the documents are immaterial under the issues which the Court has defined, and even the references to them and the characterization of them is highly prejudicial, and this sort of prejudicial conduct should not be continued any longer. The defendants can't get a fair trial in a court with this sort of conduct going on with these implications without us having a single opportunity to meet it.

By Mr. Freeman: I don't know what implications there are when you state facts, and all I am doing is stating a fact of certain things having occurred, the exe-

cution of affidavits, the issuance of telegrams and subpoenas.

By Mr. Meserow: Your Honor has already excluded them.

By the Court: May I look at them, please?

597 By Mr. Meserow: Your Honor has ruled and excluded these in previous rulings.

By the Court: All of them will be excluded and any references made to them will be stricken from the record.

By Mr. Owens: Your Honor, with respect to future documents in these areas that have been proscribed by the Court, could the Court direct the defendants, the attorneys for the plaintiff to hold those and offer them out of the presence of the jury?

By the Court: I will not go beyond my earlier admonition. I have made my record clear, and I will persist in it.

By Mr. Freeman: Page 2414. I think you have a ruling on that already, and I will leave that. Page 2419. (Reading):

"Q. To what extent were you kept in touch with the negotiations for the Chicago transfer services during 1954 and 1955?

A. Oh, in a very general way.

Q. What type of contact did you have with these negotiations?

598 A. Well, I knew that it was going on for some considerable time. I knew that some other people were being interviewed and bids were taken. I did not know the details of the bids or anything of that sort.

Q. Did you get any written memoranda from Mr. Duffy with respect to the Chicago transfer negotiations prior to June 3, 1955?

A. I don't recall that I ever did. The negotiations which started in 1954, I don't know that I did.

Q. Then, whatever reports were made to you, were they made orally?

A. I would think that would be correct.

Q. Would you receive those from Mr. Duffy?

A. Oh, I might receive those from any number of people, because now you get into the question of what is going on.

Q. I would like to know that.

A. I would, too, sometimes, myself. The administration of the affairs of a large company takes you into conversations with a lot of people and I would be very much perplexed to recall where I found out about a lot of things."

By Mr. Freeman: I am skipping a few questions.

By Mr. Thompson: If your Honor, please, I think—

599 By Mr. Freeman: (Reading)

"Q. Did you have regular meetings with Mr. Duffy with respect to the operation of his department?

A. Oh, yes and no. We have staff meetings and such, and sometimes I will visit with the traffic people while they are having meetings and, no doubt I can now answer your question and say that I had a meeting with Mr. Duffy about his department.

Q. Did Mr. Rydin, from time to time, discuss with you the Chicago transfer situation?

A. I can't recall that he did.

Q. You can't recall any instance when he might have mentioned it to you?

A. No.

Q. Did you have any meetings or any conversations with Mr. Anderson, your general passenger traffic agent, with respect to the Chicago transfer situation?

A. I can't remember them. Now, of course, I say again you asked me if I had a conversation with Mr. Anderson about this. You asked me if I had a conversa-

tion with Mr. Anderson and you asked me if I had a conversation with Mr. Anderson about it and I say, I don't recall it. I don't recall whether I had any conversation with him about dining car service, but you do have 600 conversations and you do keep in touch with things the best you can. Sometimes you don't do so well.

Q. Would it be customary for you to have talks with Mr. Anderson about passenger service, or would your conversations be with the vice-president?

A. Oh, it would be both.

Q. How about Mr. Sloan, who is the assistant passenger agent?

A. I would have less with him.

Q. Did you have no conversation with Mr. Sloan on June 2nd, 1955 that you might recall, with respect to the Chicago transfer situation?

A. No.

Q. Did you give Mr. Sloan any instructions with respect to his position on that committee?

A. I did not.

Q. Did you give Mr. Anderson any instructions?

A. I did not.

Q. When were you advised for the first time of the vote that the Santa Fe was going to cast at the committee meeting on June 3rd?

A. Well, sometime shortly before that. I wouldn't attempt to put a date on that but, it was pretty close 601 up to that time.

Q. And who advised you?

A. I think it was Mr. Rydin.

Q. What did Mr. Rydin say to you?

A. Well, the general fact that the vote was coming up soon and which way did we vote.

Q. Will you finish your answer?

A. I finished my answer.

Q. You said Mr. Rydin said to you, 'Which way did we vote?'

A. Yes.

Q. What was your answer to him?

A I told him to vote for Keeshin.

Q. All right. Had you had any information with respect to that, prior?

A. Well, I had information either then or immediately prior to that. The question had arrived at where the survey showed—if that is the word—that there were two bids, one Keeshin, one Parmelee. I had that.

Q. Had you received any—I think you have answered this before—any memorandum of the passenger traffic people prior to the time you told Mr. Rydin that?

A. Written memorandum?

Q. Yes.

602 A. No.

Q. Had you received any information with respect to the attitude of your passenger traffic people prior to the conversation with Mr. Rydin?

A. I don't know that I received anything prior, but at the time of the conversation, I think Mr. Sloan's opinion was stated.

603 Q. What did Mr. Rydin say with respect to Mr. Sloan's opinion?

A. Well, as to the basic question of which way to vote?

Q. Well, will you tell us everything that happened at that meeting?

A. I think the general effect was that Mr. Sloan thought we should continue with Mr. Parmelee—not Mr. Parmelee, I am sorry.

Q. Did you say anything else to Mr. Rydin in addition to vote for Keeshin?

A. Well, I got the information as to the respective bids, as to what relative standing they had. I got that, of course.

Q. What was that?

A. They were not far apart; that the Keeshin bid was good or better.

Q. And did Mr. Rydin say that to you?

A. That is my recollection.

Q. In what respect did Mr. Rydin say that the Keeshin bid was good or better?

A. I can't answer that. I wouldn't attempt to quote him.

Q. How long did this conversation last?

A. Not very long.

604 Q. I don't know whether we have exhausted your recollection, Mr. Gurley, but, with your indulgence, will you just tell us everything that you can recall that Mr. Rydin said to you in that conversation?

A. No, I don't know that I can recall much more than I have said. Certainly we did not get into a discussion as to the nickels and dimes of it. It was a summation or evaluation of it. We did not get into the details of it.

Q. Did Mr. Rydin make a recommendation to you?

A. I don't recall that he did. I think he merely reported.

Q. Merely reported Sloan's recommendation?

A. Yes. I don't recall that he added one of his own.

Q. Where did this meeting take place?

A. Well, it would be either my office or Mr. Rydin's office; I don't know which. We had adjoining offices and we would go back into them.

Q. You think it occurred shortly before the committee meeting?

A. That is correct.

Q. Would that be on June 2nd or June 1st?

A. I don't recall what date it was, but I know
605 that it was clearly close to that time.

Q. Did Mr. Rydin at that time advise you that Keeshin had contacted executives of other railroads?

A. He did not.

Q. Did Mr. Rydin advise you at that time that Mr. Cross had contacted executives of other railroads?

A. He did not.

Q. Mr. Gurley, do you recall that you were in Chicago during the week of May 31st through June 2nd?

A. I don't recall it, but that book would show it.

Q. Would you look at the book and see if you can recollect it?

A. Well, the record shows I was in my office May 31st to the morning of June 2nd. It shows that I left in the morning of June 2nd for a trip over to the T.P.&W.—"

If I may interpolate, that is the Toledo, Peoria and Western Railroad.

"It shows that on the morning of June 3rd I was in the office for an hour and flew to Detroit with Dr. Miller of Northwestern University to see Mr. Curtice of General Motors.

606 Q. On the basis of refreshing your recollection when you look at the diary, can you now tell us more precisely when you might have had this meeting with Mr. Rydin?

A. No, I cannot.

Q. Well, we do know it wouldn't have been the afternoon of June 2nd, in any event, because you weren't in town.

A. That is a reasonable assumption.

Q. Would it also be a reasonable assumption that your meeting with Mr. Rydin was either May 31st or June 1st or the morning of June 2nd?

A. I don't know whether that would be a reasonable assumption or not."

By Mr. Freeman: I will leave out some questions. Then page 2429.

By Mr. Freeman: (Reading)

"Q. Let me ask you, Mr. Gurley: If contact had been made with executive officers of other railroads with respect to this type of negotiation, wouldn't that involve a matter of policy that you would want to be apprised of?

A. No.

Q. You would not regard that as of any signifi-
607 cance to the proper management of the Santa Fe?

A. No.

Q. Would you expect that if your passenger people had heard that Cross had made contacts with the presidents of some of the eastern railroads that you would want to know about it?"

By Mr. Meserow: Objection.

By The Court: Sustained.

By Mr. Freeman: I will leave that out.

Next, page 2432.

By Mr. Freeman: (Reading)

"Q. Does the Santa Fe have matters of regulatory importance pending before the Interstate Commerce Commission almost constantly?

A. Well, I suppose we do, although a big railroad like ours, the regulations pending, I suppose there is something pending sometime or other most of the time. Whether there are gaps in it or not—

Q. Did you have a very significant rate proceedings involving the elimination—"

By Mr. Meserow: Objection.

By Mr. Freeman: (Reading)

"Q. (Continuing)—elimination of discrimination of intrastate rates along your system?"

608 By Mr. Freeman: That is the end of the question.

By The Court: Objection sustained.

By Mr. Freeman: All right. I will leave that out.

Then I identified a series of exhibits, but I will skip those and start with page 2435.

By Mr. Freeman: (Reading)

"Q. Will you look at Gurley Exhibit 9, which is dated June 14, 1955.

Was that memorandum addressed to you? I assume you saw that.

A. I saw that. It has my personal file check on it.

Q. Was that memorandum routed to other people in the organization?

A. What is that?

Q. Was that memorandum routed to other people in the organization?

A. Well, the memorandum is addressed to me, with a copy to Mr. Rydin. There is a check mark indicating that he saw it and there is a check mark indicating that Mr. Marsh saw it.

Q. Do you know if this was the first memorandum

609 that you received, bearing upon the Chicago transfer situation?

A. I couldn't answer that but I answered those others.

Q. Do you know of any other memorandum that you received prior to that?

A. No, I do not.

Q. Mr. Gurley, you have been served with two subpoenas and I would like to just go through them and see what information has been produced with respect to them. The first subpoenas—"

By Mr. Freeman: I will leave that out. Then question on page 2439.

By Mr. Freeman: (Reading)

"Q. Well, we have reproduced all of those papers that were turned over to us from the president's file. So far as we know, it consists of the 28 sheets that you have before you. I have no reason to doubt it, but I just want to know whether you know of any other papers other than those papers which have been turned over to us previously.

A. Well, the answer to your question would be no.

Q. Will you notice that the memorandum prior to June 14, 1955, which has been identified as Gurley Exhibit 9 is preceded by a memorandum dated 1950?

610 A. What is that, now?"

By Mr. Freeman: Then the question was repeated.

By Mr. Freeman: (Reading)

"A. Well, taking a hurried look at these papers you handed me, I notice a file identified as SF-10 which is dated June 14, 1955, and immediately adjacent is one marked SF-11, dated November 29, 1950.

Q. Were there any memoranda sent to the president's office or brought to the president's office or to your attention during the period from November, 1950 to June 14, 1955, bearing upon the Chicago transfer situation, that you know of?

A. The answer to that is no. I do not know.

611 Q. Would the position of those papers indicate to you that you received no memorandum on the Chicago transfer situation during that period?

A. I don't know how to answer that, but, the file you gave me doesn't show anything."

By Mr. Freeman: I am leaving out some questions about Mr. Cross.

By Mr. Freeman: (Continuing reading)

"Q. Mr. Gurley, just one other question. You discussed the meeting that you had with Mr. Rydin some time prior to June 3rd. Who arranged for that meeting? Did you call him in?

A. Yes."

By Mr. Thompson: What page?

By Mr. Freeman: Page 2444. Then Mr. Thompson cross-examines Mr. Gurley.

(Continuing reading):

"Cross Examination by Mr. Thompson.

Q. With respect to your conversation with Mr. Rydin, at the time that you expressed your preference with respect to who should receive the contract, what was the reasoning? What were the reasons that backed up your judgment that the contract should be awarded to Mr.
612 Keeshin?

A. Well, the reason was a simple one; that in the spring of 1954 the roads had embarked upon a plan to attempt to get another operator, and at the end of the period of time that elapsed between that and the date of the decision, along in June 1956, Mr. Keeshin, as I understood it, was the only one who had a bid in. The others had dropped out. His bid was as good or better and it seemed rather clear to me that if we were going to take advantage of the opportunity to make a change, on which the decision was embarked upon in the spring of 1954, that we either do it then or we would not do it at all.

Q. Well, now, in your discussion with Mr. Rydin, do you recall telling him how you felt about the matter? Did you reason this with him and give him these reasons?

A. Oh, I would doubt that I did. It is not normally a practice for me to think out loud that way.

Q. Well, did you have more than one conversation with Mr. Rydin or was there only one?

A. I should think there were two.

Q. All right. I think you haven't made it clear. What was the first conversation you had with him and to
613 what extent did you discuss the matter with him the first time?

A. Well, in the normal course of events you would ask a fellow what if anything had been going on on a certain matter; how we stand.

Q. Were both of these conversations—you said there were two—close together?

A. Oh, yes.

Q. During the last week preceding June?

A. Oh, they would be fairly close together, yes.

Q. Is it your recollection that he did report back to you?

A. That is my recollection."

By Mr. Freeman: This is all examination by Mr. Thompson. (Continuing reading):

"Q. Now, in this second conversation with you, after he reported back to you, will you tell us what he said and what you said, the best you can recall?

A. The second conversation was the one I referred to which I tried to describe earlier. I was adressing myself more to the second conversation than the first. The first conversation was a question of interrogation.

Q. Tell us the best you can what you conversation
614 was. See if you get it complete as to what you said and as to what Mr. Rydin said in this second conversation.

A. I don't know what I can tell you, Judge, precisely what he said. I have said the sort of a conversation it was. The gist of it was as I have said earlier in response to your questions, Mr. Freeman.

The one fellow remaining in the bid was Keeshin and his bid was as I have described it and that is the gist of it. Now, what he said and what I said, I couldn't do that, I am sorry to say.

Q. Well, anyway, as I understood your statement, then, at the conclusion of your conversation, whatever it was, you told him you figured that Santa Fe ought to vote for Keeshin.

A. That is correct. I wasn't talking about anybody else.

Mr. Thompson: That is all."

By Mr. Freeman: Then I continue with redirect examination.

"*Redirect Examination by Mr. Freeman.*

Q. Mr. Gurley, would you just try to recall everything that was said at the first conversation and will you
615 try to place the date of it if you can?

A. Well, the date of it would be some time in the latter part of the spring of 1955. Both conversations would take that broad classification. The first was a request to be brought down to date on where things stood and all that sort of thing. That was about all there was to that first conversation. The second conversation was as I have outlined it in answer to the direct questions of counsel.

616 Q. Why did you ask Mr. Rydin to bring you down to date?

A. He was the logical man to ask, I thought.

Q. Was he the vice-president in charge?

A. He was the vice-president in charge of the executive department.

Q. Under which vice-president did the matter of passenger traffic fall?

A. Well, Mr. Duffy.

Q. And under whose jurisdiction did the matter of negotiations of the Chicago transfer contract fall?

A. Well, that would fall both ways. It is with reference to the traffic department and Mr. Rydin—that is, the negotiations would fall within the traffic department. They would handle the direct across-the-table negotiations.

Q. Is Mr. Rydin your representative on the board of directors of the Railway Express Agency?

A. Yes.

Q. Did he report to you on a conversation he had with Mr. Capri?

A. No. I am assuming again.

Q. On the transfer situation?

A. No.

617 Q. Is that all you can recall of this first conversation with Mr. Rydin?

A. That's all I can recall on the first and second conversations."

By Mr. Freeman: That was the end of the deposition. I have offered the exhibits and they have been excluded.

By Mr. Thompson: Just a minute, please, Mr. McConnell.

Will Mr. Gurley take the stand, please?

FRED G. GURLEY, called as a witness herein on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Redirect Examination by Mr. Thompson.

Q. State your name, please.

By Mr. McConnell: Wait a minute. I object to calling a witness in our side of the case.

By Mr. Thompson: I have got a right to redirect a witness after they have examined him on adverse examina-

tion, and they have examined him by reading a deposi-
618 tion, and I have a right to ask him questions.

By The Court: You may proceed. Objection overruled.

Let the record show that he is being called for redirect on the testimony offered so far.

By Mr. Thompson: That is right.

By Mr. Thompson:

Q. State your name, please.

A. Fred G. Gurley.

Q. What is your residence address, Mr. Gurley?

A. 180 East Delaware Place, Chicago.

Q. And your business address?

A. 80 East Jackson, Chicago.

Q. Were you in the court room during the reading of the deposition by the plaintiff's attorneys?

A. Yes, I was seated here.

Q. In connection with that testimony, I want to ask you a few questions.

Had you at any time during this period that we are talking about in 1955 had any conversation with any president of any of these other railroads respecting their attitude toward the transfer contract here in Chicago?

619 A. No, it so happens that I did not.

Q. Had you any information that there had been any conversations by any of these presidents with respect to the transfer contract with anybody?

A. No, I had no information on it whatsoever.

By Mr. Freeman: Excuse me, Mr. Gurley. I think these questions are perfectly appropriate except that we have been restricted from putting them and getting answers to them.

If Mr. Thompson is now seeking to go into the question of whether Mr. Gurley knew of Cross' contacts with

presidents or whether there were any conversations that he had with Mr. Cross, I think that is fine, but I think that should open the door for both of us.

By Mr. Thompson: I object to the statement of counsel.

By The Court: Objection sustained.

By Mr. Thompson: He is making an assumption which has no bearing or any relation to the questions I am now asking.

By The Court: I have permitted in your deposi-
620 tions and in your testimony you to bring before the jury any conversations or conferences with presidents of any companies. I have not excluded that.

By Mr. Thompson: That is all I am asking.

By Mr. Freeman: Mr. Thompson's question was did Mr. Gurley know of any conversation that another president had with anyone. The inference was clear. He didn't want to mention the magic name, but it was there.

My question to you is, I don't want to object to that question, we think it is appropriate to be presented before the jury, but I think counsel must be consistent. If he has objected to the questions that we put in that connection, how can he now stand and put the same questions and the answers?

By The Court: If the answer is "Yes," I will exclude the conversations with people, the same as I have with you.

By Mr. Thompson: The witness has answered that he had no knowledge of any other president's conversations with anybody.

By Mr. Thompson:

621 Q. In other words, the subject had not been discussed between you and any other president of any other railroad?

By Mr. McConnell: I object to that. He is cross examining his own witness.

By The Court: He has answered that. He said "No."

By Mr. Thompson: All right. If he did.

By The Court: Pardon?

By Mr. Thompson: I say if he did. I don't remember that.

By The Court: The first question you asked him was just that. Wasn't it, Mr. Witness?

By The Witness: Well, I rather think so. I confess I got a little lost in this colloquy here.

By Mr. Thompson: Well, the Judge has said it has already been answered. I didn't think it had been, but maybe it has. I am not going to question it.

By Mr. Thompson:

Q. Now, you have stated in your deposition that was read that you, of course, could not fix a date when a particular conversation occurred and that you couldn't state
622 the exact words that were said in these conversations you had.

By Mr. McConnell: I object to his summarizing the previous testimony of the witness.

By The Court: Objection sustained.

By Mr. Thompson:

Q. Do you have any recollection—is there any way for you to more definitely fix the time when you made these inquiries with respect to the status of this railroad transfer contract?

A. Well, I doubt it. The passage of time hasn't helped my recollection very much. I will confess that.

Q. You said you had more than one conversation with Mr. Rydin. Can you indicate the time that elapsed between your inquiry of Mr. Rydin in the first instance and your inquiry in the second instance?

A. Well, it would be a matter of days, but I wouldn't attempt to put too much time on it.

Q. Do you recall what Mr. Rydin reported to you at the time of your first inquiry?

By Mr. Freeman: I object to that. This was already asked by Mr. Thompson at the deposition without any restriction.

623 By The Court: I believe so.

By Mr. Freeman: I read these questions into the record that were asked that Mr. Thompson put to this witness.

By The Court: He may answer again.

By The Witness: Will you read the question?

(The record was read as above recorded.)

By The Witness:

A. No; I don't know that he made much of a report at the time of the first inquiry. The first inquiry was one of mine to have him find out, if he didn't already know, just how things stood. I don't recall that he made much of a report at the first conversation.

By Mr. Thompson:

Q. Well, do you know whether or not the matter was still under consideration at the time he made his first report?

A. Oh, yes, I beg your pardon. Certainly.

Q. Do you recall anything else he reported other than that?

By Mr. Freeman: He already answered that ques-
624 tion.

By the Court: He may answer.

By the Witness:

A. No, I don't recall much more than that.

By Mr. Thompson:

Q. Now, then, the second conversation you had with Mr. Rydin, was that also in response to an inquiry you made of Mr. Rydin?

A. Correct.

Q. And have you given us all the recollection you have of that conversation you had with Mr. Rydin at this second time?

A. I have.

Q. There was some reference made to a document of September 22, 1950, in your file. Will you look at this document which I will have marked as Defendants' Exhibit No. 2 for identification; and is that the document to which reference was made, the 1950 document?

A. Judge, I am not clear about your question. Do you mean is this letter dated September 21 the one to which mention was made in my deposition?

Q. Yes.

A. Well, frankly, I don't remember. I cannot answer that. My memory doesn't hold on it.

Q. Well, what does that red stamp signify, if anything?

A. "President's Office, Santa Fe Railway System, September 22, 1950, File 155-M."

By Mr. McConnell: I object to reading this, the documents which are in evidence.

By the Court: Overruled.

By Mr. Thompson:

Q. Does that document or does that mark indicate that it had your attention, that is, that you saw it?

A. Well, the probabilities are that I did. My check mark is not on it, but that is not necessarily significant.

By Mr. McConnell: Can we have these documents identified so we know what we are talking about here?

By the Court: Yes, certainly you may.

By Mr. McConnell: I mean identified with a mark.

By Mr. Thompson: I have already said I would have them marked, and I will have it done right now. Mark this Defendants' Exhibit No. 2 for identification, and
626 this as Defendants' Exhibit No. 3, for identification.

(Thereupon the said documents were marked Defendants' Exhibits 2 and 3 for identification.)

627 By Mr. Thompson: This is a two-page document. The date of this is September 5, 1950.

By Mr. Thompson:

Q. Will you examine that and see if it refreshes your recollection that that was brought to your attention?

By Mr. Freeman: I don't understand that question, Mr. Thompson. Could you be a little more specific what you are trying to get from the witness?

By Mr. Thompson: I thought the question was perfectly clear.

Read the question, please.

(Thereupon the record was read as above recorded.)

By the Witness:

A. The subject matter was. I am not so sure about the written memorandum coming to my attention.

By Mr. Thompson: Here is another document which I will have marked as Defendants' Exhibit No. 4, for identification, which consists of two related documents, one a memorandum dated August 31, 1949 and the next one dated September 1, 1949.

628 (Thereupon said documents were marked, respectively, Defendants' Exhibit No. 4 for identification.)

By Mr. Thompson:

Q. I ask if you recall receiving that document addressed to you?

A. Yes, I recall this one. This has my initials on it. I remember that quite clearly.

Q. And it was transmitted to you in the regular course of business of the Santa Fe Railroad?

A. That is correct.

Q. And it was the regular course of business of the Santa Fe to have transmitted to you memoranda on these subjects that refer to railroad business?

A. Yes, either written or verbal, both ways.

Q. At the time that you reached your decision as to how the Santa Fe should vote on the matter of awarding this contract, what were the considerations that prompted you to reach the conclusion that you did?

By Mr. Freeman: I object to that. He has already stated what he said to Mr. Rydin when he came to his conclusions. I don't think we can go into this kind of introspection at this time.

629 By the Court: Objection overruled. He is the one who made the decision.

By Mr. McConnell: You wouldn't let us go into the other end of it. Now you are going to let this man give his—

By the Court: I didn't let somebody interpret somebody else's decision. He made the decision. I had no such ruling in your case.

By Mr. McConnell: We tried to show—well, never mind. I have made my record on it.

By the Witness:

A. Well, I thought it was a rather simple proposition, and I thought primarily, of course, that I was under obligations to no one, that I could decide with whom we wanted to make a contract which seemed to be a prerogative of mine, I thought, and our group had a year and a half or so before that got around to the point where they wanted to try to get some other operator, and it had

finally got to the point where another operator gave them a bid which, according to the advice given me, was as good or better, and, as I stated on my deposition, I thought that having embarked upon the course that
630 the group embarked upon, that there probably would never come a time when you could do what they set out to do unless you did it at the time.

That is a very simple line of reasoning, because I thought that—well, if you don't change now, you never will.

By Mr. Thompson:

Q. Had you been aware of the labor difficulties that were recurring with respect to the Parmelee operations?

By Mr. McConnell: That is not proper redirect, your Honor. There is nothing in the direct about labor difficulties.

By the Court: Overruled.

By the Witness:

A. Well, I knew about the strikes. Some of them at least I recall, some of it. Some of the information there had reference to the strike in 1950. There had been some other labor difficulties. I am not too clear about those.

By Mr. Thompson:

Q. Were you aware—

By Mr. McConnell: And I move to strike it all out as hearsay.

By the Court: I didn't hear that.

631 By Mr. McConnell: I move to strike it all out as hearsay.

632 By the Court: I think that is a good objection. Objection sustained.

By Mr. Thompson: Well, the information he had about the 1950 strike, there is no hearsay about that.

By the Court: The first one—well, let him state what information he had.

By Mr. Thompson:

Q. What knowledge did you have about this labor difficulty?

By Mr. McConnell: I object to it unless we have a conversation with somebody where we are present. He is going to try to bind us on something he heard from some other source, and it is obviously hearsay.

By the Court: Overruled.

By Mr. Thompson: It isn't necessarily something he heard if he could see what happened.

By the Witness:

A. I have a clear recollection of the 1950 strike. There is nothing mysterious about that.

By Mr. McConnell: I move to strike out his characterization—"nothing mysterious."

633 By the Court: Overruled.

By Mr. Thompson:

Q. Do you remember how long the strike lasted?

A. Five weeks. That is about all I can recall.

Q. What made the difference in the character of service that was promised to be rendered by the Keeshin Company and which has been rendered since the contract was awarded?

By Mr. McConnell: I object to this. This is in his main case.

By the Court: Overruled.

By Mr. McConnell: This is not proper redirect examination.

By the Witness:

A. Well, as to the service which has been rendered, I think it might more properly be addressed to one who has been in a little more active service than I. The promise was for good service, but I think some of it, some of the continuing people could answer you better than I on what had actually taken place. I have been retired for some little while.

Q. Well, have you observed the character of the vehicles that are being used?

A. Yes, I have seen that, of course, as a matter of
634 observation.

Q. How did they compare with what were used prior to the time of the change of service?

By Mr. McConnell: I object to that as not proper redirect examination. I also object to it unless we have when he was there, what he saw, a time and place fixed.

By the Court: Objection overruled.

By the Witness:

A. Well, they were of a different type. They seemed quite all right to me, quite good.

By Mr. Thompson:

Q. Do you mean the new ones?

A. Yes, and they were new, more modern, of course, purchased later.

Q. Do you know anything of your own knowledge about the dispatching of service from one station to another?

A. No, I do not.

Q. Or about air conditioning or any of the other physical properties?

A. No, I do not know about that.

By Mr. Thompson: That is all.

By Mr. McConnell: May we have a recess now?

635 By the Court: Yes, we can recess for lunch. Have a nice lunch and don't discuss the case with anyone, and come back at 2:00 o'clock.

(Thereupon the following proceedings were had outside the presence and hearing of the jury:)

By the Court: 2:15 for the lawyers.

By Mr. Thompson: Do you have preliminaries?

By the Court: I have a preliminary motion, a short one. 2:15, please.

(Whereupon a recess was taken to 2:15 o'clock, p.m., of the same day, April 27, 1960.)

636 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Wednesday, April 27, 1960,
2:15 O'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

637 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

638 By the Clerk: Case on trial.
By the Court: Bring out the jury.

(Whereupon, in the presence and hearing of the jury the following proceedings were had:)

By the Court: Good afternoon, ladies and gentlemen. All right, gentlemen, proceed.

By Mr. McConnell: We would like Mr. Gurley back on the stand, your Honor.

FRED G. GURLEY, having been previously duly sworn, resumed the stand and testified further as follows:

Recross Examination by Mr. McConnell.

Q. Mr. Gurley, you spoke this morning about some group that you had reference to where you were thinking about making a change from Parmelee, and you now thought this would be a good time to do it.

What group was that?

A. Well, I guess the word group is as good a word — why, it was the Chicago Terminal Lines group, sticking to the word group, who set out in early 1954 to see about other bids and that sort of thing, trying to get other bids.

Q. Who composed the Chicago Terminal Lines group?

639 A. Oh, it would be practically all of the Chicago railroads. I think you would except from that certain small railroads, but by and large, the railroads serving Chicago.

Q. Would it be the group of 21 railroads which were coming in or going out of Chicago?

A. I think that would probably be correct, yes, but I say again, I think perhaps, though don't hold me too close to this, that one or two of those would not have any interest in this particular affair.

Q. Did you have representation — I don't mean you personally, but your company?

A. Oh, surely.

Q. You had representation on that group?

A. Yes.

Q. Now did that group discuss back and forth between themselves what was to be done about this transfer business, so far as you know?

A. Well, certainly they discussed among themselves what to do about bids from other companies, and they would be the ones who would discuss among themselves the satisfaction or dissatisfaction, or things of that sort about it.

640 Q. Now I understand your company was represented on a smaller group, a so-called sub-committee.

A. Yes.

Q. To deal with this transfer problem.

A. That is correct.

Q. What railroads were represented on that group?

A. Well, I think it was the New York Central, the Illinois Central, Santa Fe, the North Western, and, I think, the Pennsylvania.

Q. Did you mention the Illinois Central?

A. I intended to, if I did not. I think I did.

Q. The Baltimore and Ohio, was that on it?

A. Well, they might have been. I was thinking it was the Pennsylvania, the eastern railroad. Conceivably the Baltimore and Ohio might have been on it. I would not be too sure about that.

Q. The eastern group was the Baltimore and Ohio, Pennsylvania and the New York Central, were they not?

A. I think that is correct.

Q. And the western group was the Illinois Central, your railroad, and the North Western?

A. That is correct. That is what I said, except I was not clear about the Baltimore and Ohio.

Q. On April 29, 1955, did you go down to Wash-
641 ington and attend a meeting of the American Railway Association?

A. No.

Q. Well, did you attend any meeting of that group in the spring of 1955 in Washington?

A. Well, let me go back over that question, please. You say on April 29 did I go down to Washington? Let me go back. Was April 29 a Friday?

I attended a meeting either the 28th or 29th at Washington. If Friday was the 28th, I was there.

642 Q. I don't know, Mr. Gurley, whether it was Thursday or Friday, or what day of the week it was, somewhere around that time being good enough for me.

A. That is right; I attended a meeting of the AAR. April 29th?

Q. Yes.

A. Oh, no, I did not.

Q. That was a meeting held in Washington?

A. Yes. I did not attend that meeting.

Q. Did you attend any meeting held in Washington?

A. Yes.

Q. Of that association?

A. Yes. In April?

Q. Well, in April or May.

A. In May I did. April I did not.

Q. Did that organization meet the last Friday of every month?

A. That is the routine meeting date.

Q. And you think you were down there at the May meeting?

A. There is no question about that.

Q. That would be along about the 27th of May, wouldn't it? I don't want to hold you too closely, but the

last Friday of the month?

643 A. Yes, that is right.

Q. Do you know Mr. Wayne Johnston who was the president of the Illinois Central at that time?

A. Yes.

Q. He was down there at that time, wasn't he?

A. Well, I suppose so, but I have no clear recollection as to who attended the May meeting.

Q. Didn't you go down with him on the train?

A. Oh, no.

Q. You don't recall whether you met him there?

A. I do not.

Q. Do you recall whether you met Mr. Perlman of the New York Central there at that time?

A. I do not recall who was at that meeting.

Q. Do you recall having any discussion at that time about the Chicago transfer matter?

A. I do not. There was none.

Q. Well, I don't mean just a meeting, but while you were there in Washington.

A. My same answer would apply.

Q. All right. Did you at any time in the spring of 1955 hear a statement to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing the transfer contract?

644 By Mr. Meserow: Objection to the question, your Honor.

By the Court: Objection sustained.

By Mr. McConnell: This goes right to the point of what was in his mind at the time this contract was granted.

By the Court: Objection sustained.

By Mr. McConnell:

Q. I show you a document which is marked for identification as Plaintiff's Exhibit No. 20, which purports to be an affidavit or a copy of an affidavit subscribed and

sworn to by you under date of Novemebr 10, before Wilbur L. Camp, a notary public of Cook County, Illinois; and I will ask you if you will examine that document and tell me whether or not you executed the original of it? (Exhibit handed to the witness.)

A. I did.

Q. I show you a document which has been introduced here in evidence as Plaintiff's Exhibit No. 9, which purports to be a memorandum under date of Chicago, May 23rd, 1955, under the subject of Parmelee Transfer at Chicago, signed R. T. Anderson, and ask you whether or not you ever saw the original of that document.

645 A. I have seen this document. I would not make the distinction as to the original, but I have seen the document.

Q. Did you see that document prior to the the time that your company, the Atchison, Topeka and Santa Fe Railroad, indicated a vote in that subcommittee for Mr. Keeshin's company on this transfer business?

A. I did not.

Q. Prior to that date that I have mentioned and described to you, did you know—

By Mr. McConnell: I will withdraw that.

By Mr. McConnell:

Q. First, who was Mr. R. T. Anderson in your company?

A. Mr. R. T. Anderson was the general passenger traffic manager of the Santa Fe.

Q. Prior to that time did you know from any source in your organization, and the time I am speaking about is the time I just described to you, that Mr. Anderson had stated that, "There will be a final meeting of the committee on June 3rd to submit a recommendation to all Chicago terminal lines. We propose to recommend the continuance of our arrangement with Parmelee be-

cause of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals."

646 Do you have the question in mind now, or do I have it confused?

A. Well, I think I have your question. I knew that this vote was coming up, but I could not answer you as knowing it tied to the date of that letter. I do not — I could not do that.

647 Q. Well, that isn't quite my question.

A. I thought it was.

Q. My question is whether you knew that Mr. Anderson had made a statement that your company proposed to recommend the continuation of the Parmelee contract for the reasons that he stated in this memorandum.

A. I don't think that would be correct, because Mr. Anderson would not be authorized to state quite the way you do. He would be authorized to state his recommendation, and I knew that Mr. Sloan favored the continuation of the contract with Mr. — I keep calling it Mr. Parmelee — with Parmelee, but the condition of the company would not be announced quite the way you put it.

Q. Well now, it isn't what I put, Mr. Gurley. It is what Mr. Anderson said. He said, and I am quoting, not using my language:

"We propose to recommend the continuation of our arrangement with Parmelee because of of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals."

648 What I am asking you, Mr. Gurley, is whether or not you knew that your company proposed to continue this arrangement.

A. Well, the distinction I make with you, sir, and I must make it, is the distinction between the recommenda-

tion of one of our officers and the position of the company. I have no hesitancy in saying that I knew that Mr. Sloan favored that.

649 Q. Well, did you know that Mr. Anderson favored it?

A. I don't recall that I did.

Q. Did you know prior to this time that the Parmelee Company had made a proposal?

A. Oh, yes.

Q. Did you know prior to this time that the Parmelee Company had proposed to spend $500,000 on new equipment?

A. I don't recall that I knew the precise amount. I knew that new equipment was a part of the proposal. The amount I don't recall having specifically in mind.

Q. Did you know that Mr. Keeshin had proposed as a rate for the coupon $1.20 for the first year, $1.22 for the second year, and $1.23 for the third year, and the coupon rate for the fourth and fifth years to be increased one cent for each three cents of wage increase?

A. I do not recall that I knew those dollar and cent figures that you quote, no, sir.

Q. Did you know that Mr. Markin had submitted a proposal of $1.20 for transfer of passengers and baggage effective July 1st, 1955, with an increase of one cent in the coupon rate for each three cents of wage

650 increase with a maximum of a five-cent increase over the five-year contract, and a maximum coupon rate in each year as follows:

July 1st, 1956, $1.22; July 1st, 1957, $1.23; July 1st, 1958, $1.24; July 1st, 1959, through June 30, 1960, $1.25.

A. I would make approximately the same answer to that as I did before. I did not have those dollar and cent graduating scale coupon rates in my mind.

Q. Well, did you know this much about it, that in the Markin or the Parmelee proposal there was an absolute ceiling on how much could be charged in any single year under this proposed agreement, and in the Keeshin proposal there was no ceiling on two of those years?

By Mr. Meserow: I am going to object to the question unless counsel fixes the date of the Markin proposal. There were several, and I would like to have him fix the date.

By Mr. McConnell: The last proposal, the one referred to in this letter of May 23, 1955.

By the Witness:

A. Well, the answer to your question, briefly, is 651 no, as I think I testified earlier. I knew —

Q. All right. That is the answer. That is all I asked, whether you knew it.

A. I did not know that detail.

Q. Yes, that is what I am asking.

A. That is right.

Q. Did you know or have you learned from any source that during the continuance of the Keeshin contract, which is now in force, as I understand it, that the coupon rate has actually gone to $1.27?

A. No, I do not know that. I would like to make —

Q. If you don't know, that is all I asked you.

A. O.K.

Q. Now this Mr. Anderson, R. T. Anderson, is he still employed by your company?

A. Oh, yes. I believe he testified in here yesterday.

Q. Yes, I know he testified. I didn't remember whether he was still there or whether he had gone, whether he was getting the sort of rest that you are getting and that I hope to get.

A. He hasn't gotten there yet.

Q. Is he a competent man?

A. Yes, Andy is quite a capable fellow.

Q. Now he states, and I don't know whether he is
652 using the editorial "we" or not, and I am just quoting his memorandum. He says:

"We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition we will avoid the possibility of labor trouble in connection with operation by a new company with different union."

Now, would you say that this sort of a recommendation would be one which should be given consideration and weight by you if you had it before you?

A. Well, any recommendation of your staff should be given consideration and weight, and that would include this one.

Q. All right, but you didn't have it before you.

A I did not have that detailed language in front of me, no, sir.

Q. You didn't have the proposal before you either, did you?

A. You mean the specific—

Q. I don't mean the proposal. I don't know why I
653 can't say the right word. I mean that memorandum.

A. That is correct.

By Mr. McConnell: I have no further questions.

By the Court: All right.

654 *Redirect Examination by Mr. Thompson.*

Q. At the time you were called upon to make the decision, around the 2nd of June, did you have knowledge that the two bids were substantially the same? Was that information conveyed to you by Mr. Rydin?

A. Precisely.

By Mr. McConnell: I object to that. That class for counsel's conclusion. Whether they were substantially the same is a jury question.

By Mr. Thompson:

Q. What did Mr. Rydin say about it?

A. He said they were substantially the same.

Q. And do you have in mind anything further now that entered into your consideration of why the change should be made if they were substantially the same?

By The Court: You mean besides those he has given this morning?

By Mr. Thompson: Yes.

By The Witness:

A. Well, I don't recall precisely all I gave this morning, but I had in mind the dissatisfaction, if that is the phrase, with reference to the relationships with
655 Parmelee about prices and about opening his books and those things which caused the attempt to try to get competitive bids. I had that in mind, of course. I attempted to cover that this morning, that there was a dissatisfaction in the early part of 1954.

Q. You mentioned that Mr. Sloan was the man who was active on this committee. Did Mr. Anderson have anything to do with it except assigning Mr. Sloan to it, or do you know?

A. Well, I have an understanding, but I couldn't express definitely the relations between Mr. Anderson and Mr. Sloan. I have an understanding, but that is the best I can say to that.

Q. Well, in the protocol of the railroad industry, if I may so express it, would a memorandum from Mr. Sloan to the vice-president be one coming through you under Mr. Anderson's name, his superior?

A. Yes.

Q. And Mr. Sloan would not sign himself a memorandum he was sending to the vice-president?

A. That is correct.

Q. And if a communication came on to you, from whom would it come?

A. It would come through the vice-president.

656 Q. And that is Mr. Duffy?

A. Mr. Duffy and/or Mr. Rydin, as the case might be.

By Mr. Thompson: That is all.

By Mr. McConnell; Just one other question.

Recross Examination by Mr. McConnell.

Q. I show you a document which is marked for identification Plaintiff's Exhibit 7—

By Mr. Freeman: It has been admitted.

By Mr. McConnell: Yes, it has been received in evidence.

By Mr. McConnell:

Q. (Continuing) —which is a memorandum under date of February 15, 1955, dated at Chicago, "J. L. S.," I take it that is Mr. Sloan, addressed to Mr. R. T. Anderson, with reference to the subject "Transfer Arrangements."

I ask you whether or not you ever saw that document before.

A. Yes, I have seen that document.

657 Q. All right. Now this morning, Mr. Gurley, you told us that you didn't know what the attitude of the other railroads was, or at least, the railroad presidents. Now I ask you whether or not you knew the attitude of the other railroads on this question.

A. Well, I don't know that I did know.

Q. Now I want to call your attention to this, and I am reading from the document which is in evidence. I am reading from the last paragraph of this letter:

"Mr. Bone thinks that we should go very slow on any change in operators—"

And he is referring to the transfer arrangements in Chicago.

Now, who is Mr. Bone?

A. Mr. Bone, as I understand it, is the representative here in Chicago of the New York Central.

May I supplement my answer to you a while ago, sir?

By Mr. McConnell: Well, all I asked you is who Mr. Bone was. If your counsel wants to ask you anything else, that is all right. I haven't any further questions.

By Mr. Thompson: Go ahead and supplement whatever you want to supplement.

658 By The Witness: Well, you asked me if I had seen that document. I have. I had not seen it prior to my instructions on the matter. I have seen it. That was your question.

By Mr. McConnell:

Q. But your answer to Mr. Thompson this morning was that you didn't know what the other railroads were doing on this matter, wasn't it?

A. Yes, and I say to you now, I did not see that exhibit No. 7, or whatever it is, until later. But you asked me if I had seen it, and I said yes.

Q. But it was written by a member of your staff in your company prior to the time this thing was decided, isn't that right?

A. Yes, but I didn't see it.

By Mr. McConnell: All right. I have no further questions.

Redirect Examination by Mr. Thompson.

Q. Now, do you find anything in this document, Mr. Gurley, that says what the other railroads think about whether there should be a change in the operators?

By the Court: Are you now referring to the same 659 document, Judge?

By Mr. Thompson: The same document, Plaintiff's Exhibit 7.

By the Witness:

A. Well, this memorandum here contains this statement, "Mr. Bone thinks" so-and-so. Now, Mr. Bone is the representative of the New York Central.

By Mr. McConnell: That is right.

By Mr. Thompson:

Q. And you knew nothing about what Mr. Bone thought at the time?

A. That is the point I want to make very clear with you.

Q. And you knew nothing about what any of the rest of the railroads or their representatives thought?

A. That is correct.

Recross Examination by Mr. McConnell.

Q. But somebody in your organization knew what Mr. Bone thought about it, isn't that right, and it is so noted in the memorandum?

A. Well, the memorandum speaks for itself, sir. All I am trying to say to you is that I did not see this memorandum at the time I made my decision, and it 660 was that I had in mind this morning in saying to Judge Thompson I did not know the attitude of the other railroads. Goodness gracious, we have all had an opportunity to find that out since.

Q. I call your attention to the statement in the document which has been referred to as Plaintiff's Exhibit 7,

in which your Mr. Sloan writes to Mr. Anderson, under date of February 15, 1955, and in which it is stated:

> "Chairman Padrick advised the lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

Now that committee—tell me, what committee is referred to there, if you know.

A. Well, I assume it is the same committee we referred to a while ago, those railroads we enumerated.

661 Q. The Committee of six railroads?

A. I think that would be a fair assumption.

Q. Well, anybody reading this letter would know the view, then, of at least six railroads, wouldn't they?

A. I don't know.

Q. Well, you read it now and you tell us.

A. O.K.; I will read it.

Well, all I can say is, I have to quote from it.

> "Chairman Padrick advised the lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless the bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

I find that in the letter.

Q. Who was Chairman Padrick, by the way?

A. Well, Chairman Padrick is the chairman of an association, without being too precise about it, The Western Passenger Lines.

Q. Was he at any time chairman of the group of six?

A. I don't know, but I don't think so. I am not

662 sure, but I don't think so. I would like to change that.

Q. I call your attention to a memorandum addressed to you, not to you, to Mr. Duffy, under date of January 7, 1955, from Mr. Anderson, in which it is stated, and this is in evidence, and I am reading from a document which is in evidence:

> "The committee is still waiting for a proposal from the Willett Company and from Mr. Sid Englehart from New York. When these last two proposals are received, they will be presented, along with the others, to the Chicago terminal lines. However, the committee working on the problem did not feel that a change should be made in contractor unless there is a substantial reduction in price."

Did you ever see that?

A. I think I have answered that. I saw that later.

Q. All right. Is that the group you told us here this morning had decided to get rid of the contractor who was then doing the business?

A. I don't think I said that.

Q. Well, was that the group that you referred to 663 as a group this morning? Let's put it that way.

A. Yes, but—

Q. That is all I asked you.

A. You said that they "decided to get rid of." I don't think they could decide to get rid.

Q. Didn't you say this morning in your testimony that it was the concensus of the group of which your company was one, that there should be a change in contractor, and if they ever were to do it, this was the time to do it?

A. Yes, there was this.

Q. Was that what you said this morning?

A. I don't recall what I said, but if you will allow me, I will tell you now what my understanding is of what I said; that the group, using your word, embarked upon

a plan in early 1954 to secure other bids because of dissatisfaction with Parmelee.

They could not decide at that time to get rid of Parmelee, and if I said that, then I misspoke, if I used the words "get rid of."

They couldn't reach such a decision in 1954. They could reach a decision to seek bids and other things.

Q. You were referring to a decision they made in
664 1954?

A. That is right.

Q. Did you know that their decision, that they had reached a decision that the committee working on the problem did not feel that a change should be made in contractor unless there was a substantial reduction in price? Did you know they made that decision as late as January 7, 1955?

A. Well now, the vote of the Committee of six was sometime later than that, sir.

Q. I didn't ask you a thing about a vote. I asked you whether or not you knew they had reached the decision as set forth in this letter of your man Anderson to Mr. Duffy.

By Mr. Keating: I object to that. This document Mr. McConnell is referring to has only been admissible to the Santa Fe. Now Mr. McConnell is trying to create the impression it speaks for all six railroad defendants.

665 By Mr. McConnell: You were trying to create the impression this man didn't know anything about any other railroad, about what any other railroad did, and here it is right in the middle of it.

By the Court: He has answered it. He said he didn't see the document until later.

By Mr. McConnell: All right; that is all I have.

By Mr. Thompson: A couple more questions.

By the Court: We had better put a zipper on this. Go ahead.

Redirect Examination by Mr. Thompson.

Q. Mr. Gurley, this document to which reference has just been made, which is Plaintiff's Exhibit No. 7, for identification—

By Mr. McConnell: No; it is in evidence. I beg your pardon.

By Mr. Thompson: I am sorry about that.

By Mr. McConnell: They are both in evidence.

By Mr. Thompson: This isn't the one he was just referring to. What is the one?

666 By Mr. McConnell: No. 6.

By Mr. Thompson:

Q. Referring to Plaintiff's Exhibit No. 6, which is the one counsel was just referring to, you notice the date of that is January 7, 1955?

A. I notice that, yes, sir.

Q. Did you know that the only bid then before the group was the bid of Mr. Keeshin of December 15, 1954?

A. I did not.

Q. Did you know that the bid of Mr. Markin, which is for the Parmelee Company, was not even received by the committee until March 15 of 1955?

A. I had forgotten the date. To answer your question, no.

Q. And this other document, which is marked Plaintiff's Exhibit No. 7, is dated February 15, 1955. You didn't know of course when you saw this—I mean when you were making your decision, that the bids of Keeshin were in, in December and January, whereas the bid of Markin didn't come in until March?

A. I did not know those dates.

Q. And you didn't have these documents before you at the time you made your decision?

A. That is correct.

667 By Mr. Thompson: That is all.

By Mr. McConnell: I have no further questions. You can catch a train.

(Witness excused.)

By Mr. Thompson: Mr. Nelson.

STANLEY F. G. NELSON, called as an adverse witness by the Plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name and address?

A. Stanley F. G. Nelson, 14236 Clark Street, Riverdale.

Q. Do you have a position with the Baltimore and Ohio Railroad?

A. I do.

Q. What is that position?

A. Assistant general passenger agent.

Q. Did you hold that position in 1955?

A. I did.

Q. Were you the member of the Baltimore and Ohio Railroad who attended the meetings of the Chicago Terminal Lines?

668 A. That is right.

Q. In 1955 were you a member of the committee of six that had been established in 1954 to negotiate with respect to a transfer contract?

A. That is right.

Q. Do you have any individuals under your control in your department?

A. Well, I have the general office.

By Mr. Freeman: I would like to examine Mr. Nelson as an adverse witness of the Baltimore and Ohio Railroad, a managing agent.

By Mr. Thompson: We object to that. He is not a managing agent, and there is no foundation showing he is a managing agent. He has no authority to made decisions for the Baltimore and Ohio as far as any showing made now.

By Mr. Freeman: He is in the same position as Mr. Quackenbush.

By the Court: I will give you leeway.

By Mr. Freeman:

Q. Mr. Nelson, did you attend various meetings of the negotiating committee and of the Chicago Ter-
669 minal Lines in 1954 and 1955 looking towards negotiations for the Chicago transfer contractor?

A. I did.

Q. Did you prepare memoranda of what transpired at those meetings?

A. To the best of my ability as to what happened.

Q. What was the purpose of these memoranda?

A. To keep our headquarters office in Baltimore informed as to what was occurring.

670 Q. Was this the normal procedure in your railroad for you to prepare memoranda for the files and for Baltimore's advice?

A. That is right.

Q. Was this the regular procedure, if you know, of the other committee members?

By Mr. Thompson: We object to that. He couldn't know.

By the Court: Objection sustained, to the form.

By Mr. Freeman:

Q. Do you know whether or not the other committee members similarly kept memoranda of the meetings?

By Mr. Thompson: We object to that.

By the Witness:

A. I wouldn't know.

By the Court: He said he wouldn't now.

By Mr. Thompson: He is not qualified to answer.

By Mr. Freeman:

Q. Mr. Nelson, approximately what percentage of the total transfer business did the Baltimore and Ohio handle in 1954 and 1953 and 1955?

A. I don't have those figures.

671 Q. Would it be less than 5 per cent of the total?

A. I think about 5 per cent, thereabouts.

Q. In other words, the Baltimore and Ohio was not one of the major companies that received transferring passengers under this system?

A. Well, we considered ourselves one.

Q. It was 5 per cent?

A. As I say, I don't know the figures, but we considered ourselves one of the major lines involved in the transfer.

Q. Do you know who was the major line, the major receiving line?

A. Either the North Western or the New York Central.

Q. Did you estimate, to the best of your ability, that the percentage of transfers that you received and paid for were approximately 5 per cent; did I understand that testimony?

By Mr. Thompson: His answer was he didn't know.

By Mr. Freeman:

Q. You do not know?

A. I do not know.

Q. Well, we will straighten that out now.

Mr. Nelson, I show you a memorandum, that I

672 will have identified as Plaintiff's Exhibit No. 23, consisting of one page.

(Thereupon said document was marked Plaintiff's Exhibit No. 23 for identification.)

By Mr. Freeman:

Q. I ask you whether this memorandum was prepared by you and is in your handwriting.

A. That is right.

Q. Was this memorandum prepared at one of the meetings of the Chicago Terminal Lines, namely the one held on June 13th?

A. That is correct.

By Mr. Freeman: I offer in evidence the document that has been marked as Plaintiff's Exhibit No. 23.

Is there any objection? I offer it.

By the Court: Is there any objection?

By Mr. Thompson: I don't know what all these figures are.

By Mr. Freeman: I will ask the witness as soon as I get it in.

By the Court: I will reserve my ruling. Proceed. You may inquire about it.

673 By Mr. Freeman: Thank you.

By Mr. Freeman:

Q. Does this document attempt to set forth the percentage of the transfer traffic handled by the railroads indicated on the exhibit?

A. It does.

Q. Does it show the percentage of transfer coupons paid for by the Baltimore and Ohio Railroad?

A. It does.

Q. Does it show their percentage as 4.37 per cent?

A. That is correct.

Q. Will you tell us how many railroads in that group have a percentage of transfer traffic in excess of 4.37 per cent, if you will just count them up to yourself and give us the number.

A. Seven.

Q. What percentage does the New York Central have?

By Mr. Thompson: If the Court please,—

By Mr. Keating: Your Honor, I object to the form of the question.

By Mr. Freeman: Your Honor, I object to the form of the question.

By Mr. Freeman: I withdrew that question, and I again offer the document in evidence.

By Mr. Thompson: If the Court please, there is no indication of the source of this information. Nelson
674 says he made these notes, but whether somebody was reading them off to him or where he was getting them, I don't know anything about it.

By the Court: It may be received against him and his company but not against the others.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 23.)

By Mr. Freeman: That is good enough for the time being.

675 By Mr. Thompson: I don't know where he got his information.

By Mr. Freeman: You may ask him about that.

By Mr. Owens: Part of the foundation he would have to lay would be that he would have this knowledge himself. If you are making a memo of knowledge he had at that time, then it might be binding upon him. This is merely a memo of something that occurred at a meeting—

By the Court: Prepared by him, and it is a matter of defense and not a matter for them to establish.

By Mr. Freeman: My principle purpose is to establish the percentage of the Baltimore and Ohio Railroad, and that is his knowledge.

By the Court: Proceed.

By Mr. Freeman:

Q. Mr. Nelson, during your tenure up through 1955 did you find any memoranda in your Baltimore and Ohio files either prepared by you or anyone in the railroad which reported critically with respect to Parmelee's 676 service or equipment?

By Mr. Thompson: We object to leading the witness.

By Mr. Freeman: I have a right to.

By Mr. Thompson: You have no right to, because it doesn't come within the statute. We object to cross examination of the witness.

By Mr. Owens: He is seeking negative answers, your Honor. There is no evidence this man made a complete examination of all the records.

By the Court: Has he made a search? Proceed.

By Mr. Freeman:

Q. Well, Mr. Nelson?

A. Of our own files?

Q. Yes, just your own files.

A. There is nothing in the files written, but there may have been oral complaints.

Q. Prior to 1955?

A. Prior to 1955?

Q. Yes.

A. Yes.

677 Q. Did you testify in this case on deposition on January 18, 1957?

A. I did.

Q. Prior to June 1, 1955, do you recall writing any reports or memoranda that were critical of Parmelee's service or Parmelee's equipment?

By Mr. Thompson: If the Court please, objection. It doesn't contradict anything.

By Mr. Freeman: I am asking him.

By The Court: He may answer.

By Mr. Freeman:

Q. I am asking you now whether you wrote a report that was critical of Parmelee's service or Parmelee's equipment prior to June 1 of 1955?

A. I said I had no written critical letters, but I had orally criticized Parmelee's service from time to time and over the course of the years.

Q. To whom did you criticize Parmelee's service?

A. Primarily Mr. Scheeder.

Q. Did you ever make any comments on the condition of the equipment, whether all the vehicles should be replaced or something of that nature?

A. From time to time there was a question of sufficient equipment.

678 Q. No, I ask whether or not you made any comments or, let me restrict the question, made any comments with respect to the condition of the equipment or whether it should be replaced at any time prior to June, 1955.

A. Not that I recall.

Q. When you made suggestions to Mr. Scheeder were those suggestions given prompt attention?

A. They were given attention because I followed through to see that they were. That is part of my job.

Q. Did you ever find the people at Parmelee difficult to deal with?

A. No, because I had very good relations with Mr. Scheeder.

Q. Did you find that when the representatives of Parmelee made any commitment to you that they lived up to their commitment?

A. Again, I must say that when I had a complaint to offer, I made sure that it was corrected.

Q. Did you find that they were difficult to deal with, is my question.

By Mr. Thompson: We object to this as calling 679 for conclusions. It doesn't prove anything.

By The Court: Sustained.

By Mr. Freeman:

Q. All right.

Mr. Nelson, as a member of this negotiation committee, were you of the opinion that it was established solely for the purpose of attempting to reduce the cost of transfer service?

A. Well, originally I would say that was our prime purpose, but as we received these bids, or conversation rather than bid, from these other trucking companies whom we had contacted, we found that maybe there was an angle of service that we didn't quite appreciate, and that the service could be bettered as well as lowered in cost.

Q. I am thinking now of your attitude on this committee prior to June, 1955. Did you have any objective on this committee other than the economics of the cost of transfer?

By Mr. Thompson: We object to it. The witness has answered the question.

By Mr. Freeman: He hasn't answered that question.

By The Witness: I thought I did.

680 By the Court: I think he answered it.

By Mr. Freeman:

Q. Can you remember any discussion of the reason for the committee negotiations and activities other than purely economic?

A. You mean the Committee of Six?

Q. Yes.

A. Originally it was economics, but as time went on we found that there were other aspects that we should look into and that was service and equipment.

Q. I am asking now specifically, Mr. Nelson, if whether at any time during this committee's life up through June, 1955, there was any reason stated other than purely economic.

By Mr. Thompson: If the Court please, he has answered it twice.

By Mr. Meserow: He has answered.

By Mr. Freeman: I am asking specifically to impeach this witness.

By the Court: He may answer.

By the Witness:

A. I still repeat what I have said. Originally it was a question of economics, I grant that. There is no argument there. But as these other companies approached
681 us and we had them in and talked to them, we felt that there were also service angles that we should appreciate.

682 By Mr. Freeman:

Q. Mr. Nelson, I ask you whether on Page 1312 of this transcript, you answered this question as follows:

"Q. Can you remember any discussion of the reason for the committee negotiations and activities?

"A. The reasons were purely economic."

Was that your answer under oath—

By Mr. Thompson: Wait a minute. Finish the answer.

By Mr. Freeman:

Q. (Continuing) "They felt that over the course of years the Parmelee charges were constantly mounting, and we had no chance to review any financial statement to know whether or not those charges were justified or not."

Was that the only reason discussed by the committee throughout its life through June 1955 that you know of?

A. I am afraid I will have to stick to what I have said.

Q. Did you so testify?

683 A. I did.

Q. Under deposition on June 18, 1957?

A. I did, sir.

Q. Now let me ask you a few additional questions in that connection. Was this purely economic reason for the committee the general feeling of all the committee members and the concensus of opinion of all the committee members?

By Mr. Meserow: I object to the question as to how the other members felt. He has no knowledge.

By the Court: The question is did he so testify.

By Mr. Freeman: Did they discuss this and express their opinions with respect to the reasons of the committee. That is my question. You may answer.

By the Witness: Will you repeat that, please.

(The question was read as above recorded.)

By the Witness:

A. They surely did at the meeting. That was the prime purpose of the meeting, was each one to offer

684 his comments and his ideas.

By Mr. Freeman:

Q. No, my question was, was there a discussion among the members of the committee of the reason for the committee activities and did the committee feel and state that it was a question of economics?

A. Yes, they did.

By Mr. Freeman: I would like to have marked for the purpose of identification as Plaintiff's Exhibit 24 this two-page memorandum which has been coded B&O 106 and 107, dated January 5, 1955.

(Thereupon said document was marked Plaintiff's Exhibit 24 for identification.)

By the Court: We will take a few minutes recess.

(Whereupon a short recess was taken, after which the following further proceedings were had:)

By the Court: Bring the jury out.

All right, proceed.

By Mr. Freeman:

Q. When we recessed, I had identified as Plaintiff's
685 Exhibit 24 this penciled document, two pages.

Now I ask you, Mr. Nelson, whether this document is a copy of a memorandum prepared by you and in your handwriting?

A. It is.

Q. And was that prepared at the committee meeting of January 5, 1955?

A. That is the date shown on this.

686 Q. Was that memorandum prepared as the meeting was progressing?

A. Yes.

Q. Did you attempt to note accurately some of the things that transpired at that committee meeting?

A. What I thought was pertinent to the discussion, yes.

By Mr. Freeman: I offer in evidence this two-page document which has been identified as Plaintiff's Exhibit No. 24.

By Mr. Meserow: I am going to object to the introduction of this exhibit as not being binding upon the clients I represent. We had nothing to do with this.

By the Court: What is it, a memorandum prepared by him during the course of the meeting?

By Mr. Freeman: Yes.

By the Court: And for his own personal use?

By Mr. Freeman:

Q. I assume, Mr. Nelson, this memo was for your own use and for the use of your railroad files, was it not?

A. Yes.

By the Court: It may be received as against him and his company, and you may inquire on it in so far as
687 what transpired at the meeting to corroborate.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 24.)

By Mr. Freeman:

Q. Mr. Nelson, since this is in your handwriting, would you read it to the jury so that they can hear it?

A. (Reading)

"'Willett suggested railroads form a separate . . ." company. There is no word "company." This is my own shorthand. There are words missing here.

Q. That is all right.

A. (Reading)

". . . separate and own stock. Permanent tie up. Then suggested forming our own separate company, not acceptable. J. L. Keeshin proposal not sufficient decrease from present cost to warrant change from Parmelee company. Railroads worse off if must load and unload trailers. Holt, PRR, mentioned thinking of some managements as to discontinuing passenger
688 transfer entirely. Also possibility of giving passengers a determined amount of money for their taxi transfer. Railroads to arrange for movement of checked baggage only."

Q. I want to call your attention specifically to the notation with respect to J. L. Keeshin. What was Keeshin's proposal at that time? Do you remember?

A. I don't remember in dollars and cents, but the

proposal was that whatever dollars and cents there might be involved in it, the railroads would handle in their own baggage room, the movement of baggage by the railroad personnel.

Q. You mean you would load and unload the trailers?

A. Yes. This was, of course, unsatisfactory in so far as our Grand Central Station was concerned, which I was representing indirectly as being with the Baltimore and Ohio Railroad, because it would require an increase in our personnel. Therefore, that phase of the proposal was not satisfactory at that time.

Q. Was that phase of the proposal ever determined prior to the acceptance of the Keeshin proposal on June 3 and June 13, 1955?

A. Well, that came up in January, January 5, 1955.

689 Q. Yes, and I am asking you this, Mr. Nelson, whether that particular element in Keeshin's proposal was ever rejected or accepted prior to the time you accepted Keeshin.

A. It was rejected.

Q. When was it rejected, Mr. Nelson?

A. Well, at one of the subsequent meetings. I couldn't tell you which one.

Q. Isn't it a fact, Mr. Nelson, that the issue of whether or not baggage should be loaded or unloaded by railroad personnel or Keeshin personnel wasn't decided until August of 1955 during the course of negotiations for the Keeshin contract, after he had been accepted?

A. I am sure that is not right, no, sir.

Q. Are you really sure, Mr. Nelson?

A. Yes, because it would not have been acceptable to our company.

690 Q. Definitely not acceptable?

A. Definitely, positively.

Q. Mr. Nelson, do you know whether or not the amount of the Keeshin proposal, as it was presented on January 5, 1955, was the same amount for the transfer coupon that was ultimately incorporated in the Keeshin contract?

A. I am sure it was lower.

Q. You are sure which was lower?

A. At that time the proposal, the proposed rate was lower than that which was subsequently proposed.

Q. Let me see if I get that straight. Are you saying that in January, 1955, Mr. Keeshin proposed a lower rate than he ultimately got in the contract with the railroads?

A. Yes, but it was on the basis that the railroads load and unload the baggage.

Q. Mr. Nelson—

By Mr. Freeman: Let me identify this six-page memorandum dated May 20, 1955, as Baltimore and Ohio 48-54, the code, as Plaintiff's Exhibit No. 25.

(Thereupon said document was marked Plaintiff's Exhibit 25 for identification.)

691 By Mr. Freeman:

Q. I show you Plaintiff's Exhibit No. 25, and I ask you whether you had that prepared during the course—I mean from your notes taken during the course of the committee meeting of May 19.

A. Yes.

Q. Does this memorandum attempt to set forth what transpired at that meeting and also an analysis of the Keeshin and Parmelee proposals?

A. That is right.

Q. Does it attempt to set forth as accurately as you knew how?

A. That is correct.

Q. Was this memorandum prepared for the purpose of informing your superiors in Baltimore, as well as for the files of the Baltimore and Ohio Railroad?

A. That is right.

Q. And was it prepared in the normal course of your railroad business and your functions with the railroad?

A. That is right.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit No. 25.

By Mr. Thompson: Confine it to the Baltimore 692 and Ohio Railroad.

By The Court: The same ruling, confined to the witness and his company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 25.)

By Mr. Freeman:

Q. I ask you to look at this memorandum, Mr. Nelson, and to tell me whether or not it isn't true that the Keeshin proposal as far as the dollar amount for the transfer, remained the same from December 1954 through May of 1955 when this memorandum was prepared, and that it was $1.20 for the first year, $1.22 for the second year, and $1.23 for the third year?

By Mr. Thompson: Of course, if that is a question in the sense of cross examination, it is not based on the facts, and it is an assumption of fact which isn't true.

By Mr. Freeman: I am asking the witness.

By The Court: The witness may say no, it isn't true, or he may say it is true.

By Mr. Thompson: I think counsel knows that the proposal was amended on January 15.

By Mr. Freeman: Well yes, I think Mr. Thompson 693 is right.

By Mr. Freeman:

Q. The original Keeshin proposal was $1.20 for the first year with an escalator clause, and on January 15th the escalator clause was put in operation with $1.22 for the second year and $1.23 for the third year.

With that amendment, Mr. Nelson, do you know whether or not the Keeshin proposals remained that way from beginning to end as far as the dollar amount that he was to charge for the transfer coupon?

A. My recollection is that the original amount for which that memorandum was prepared was less.

Q. Did you participate in the preparation of the committee report, a so-called progress report, on January 5, 1955?

A. That is right; I did, sir.

Q. Would that report have contained the amount of the Keeshin proposal as of that time?

A. I think it did.

By Mr. Freeman: I will introduce that later. I would like to read various items of this memorandum to the jury.

694 By Mr. Meserow: It is not in evidence yet.

By Mr. McConnell: Yes, it is.

By Mr. Thompson: As to the Baltimore and Ohio only.

By the Court: The jury understands that, that it is limited only to the Baltimore and Ohio and not to the others.

By Mr. Freeman:

Q. Let me ask you a few additional questions first. Mr. Nelson, was your committee augmented by additional passenger traffic executives from other railroads at the May 19th meeting?

By Mr. Keating: I object to the classification of "executives".

By the Court: I beg your pardon?

By Mr. Keating: Objection to the classification of "executives".

By the Court: Representatives.

By Mr. Freeman: They are executives, your Honor; I am sorry.

By the Court: I will sustain the objection.

By Mr. Keating: And I object to Mr. Freeman's statement.

695 By the Court: Unless you say representatives or who they were.

696 By Mr. Freeman: All right.

By Mr. Freeman:

Q. Was the committee augmented by general passenger traffic managers of several of the railroads?

A. Who were members of the committee?

Q. Who were not members of the committee.

A. Whose representatives were members of the committee?

Q. Yes.

A. Yes.

Q. What I am asking you is whether or not members who were superior to the members of the committee did not come to the May 19th meeting.

A. Some of them did.

Q. Mr. Whittington, for instance, from your railroad?

A. Yes.

Q. Mr. Whittington held the position of what with the Baltimore and Ohio Railroad?

A. General passenger traffic manager.

Q. Is that the highest passenger traffic position under the vice-president?

A. That is right.

Q. And did Mr. Whittington attend any prior committee meeting or Chicago Terminal Lines meeting for ten years prior to 1955 that you knew of?

697 A. Ten years?

Q. Yes.

A. I forget when he left Chicago. He left Chicago in 1946 or 1945, whatever that period was, and from that period on he did not. Previous to that period he did.

Q. From the time he left Chicago he never again attended the committee meeting or a Chicago Terminal Lines meeting until this May 19th meeting, is that right?

A. That is right.

Q. And Mr. Whittington was at the May 19th meeting?

A. Well, let me see. I believe right at the top there it shows the names of the individuals. Yes.

Q. Was there any other individual present that had a capacity similar to Mr. Whittington for the first time?

A. Mr. E. R. Comer, passenger traffic manager of the Pennsylvania Railroad, and I believe that was the first appearance of Mr. J. R. Brennan, passenger traffic manager of the North Western Railroad.

Q. And Mr. Nelson, weren't you called by Mr. Bone of the New York Central prior to this May 19th meeting on or about April 28 and told or requested to have

698 present at the meeting top passenger executives because Cross had intervened in the transfer negotiations?

By Mr. Meserow: I object to the question.

By the Court: Objection sustained.

By Mr. Keating: And I move that statement be stricken.

By Mr. Thompson: It is a vicious misstatement of facts.

By Mr. Keating: And that the jury be instructed to disregard it.

By the Court: Yes.

By Mr. Freeman:

Q. Mr. Nelson, when did Mr. Whittington arrive in Chicago for this May 19th meeting?

A. That morning.

Q. Did he discuss the Chicago transfer problem with you before the meeting?

A. He did not.

Q. Was Mr. Whittington the prime mover at the committee meeting on May 19th?

By Mr. Thompson: That is calling for a conclusion.

By Mr. Freeman: I use his language, your Honor.

699 Was he the prime mover at the committee meetings?

By the Witness:

A. He was one.

By Mr. Freeman:

Q. No; prime is the prime mover. He was the principal—

A. As I recall it, he was one of the principals.

Q. Yes, and he did ask most of the questions, didn't he?

A. He asked a lot of them, a great many of them.

Q. Did Mr. Whittington stay in town after the May 19th meeting?

A. He did.

Q. How many days did he stay here, do you remember?

A. As I recall, it was just the next day.

Q. Wasn't it two days? Didn't he stay until May 21st?

A. I don't recall, but he was in Chicago the next day.

Q. Did he stay to receive this memorandum from you?

A. I believe I stated in my deposition that was so, but that was being presumptious on my part.

Q. In any event, you did deliver this memorandum to him in Chicago?

A. That is right.

700 Q. And did you also deliver another memorandum to him of your conversation with Mr. Bone with respect to supplementation of the Parmelee proposal?

A. I did.

701 Q. I will read parts of this memorandum to you.

"The regular sub-committee of Chicago Terminal Lines, augmented by the presence of Mr. J. F. Whittington, general passenger traffic manager, and Mr. R. E. Coleman, passenger traffic manager, Baltimore and Ohio Railroad; Mr. E. R. Comer, passenger traffic manager, Pennsylvania Railroad; and Mr. J. R. Brennan, passenger traffic manager, Chicago and North Western Railway, met with Mr. J. L. Keeshin and associates and Mr. Morris Markin and associates of the Parmelee Transportation Company to discuss the proposals submitted by them for the transfer of passengers and baggage and checked baggage between stations at Chicago and other special services allied thereto.

"Am showing below results of discussion of the proposals already submitted, together with other services which were not clearly outlined therein and

702 would necessarily be included in a final understanding:

"J. L. Keeshin: Mr. Keeshin referred to his original proposal of December 15, 1954, and his letter of April 6, 1955, concerning and clarifying some of the items contained in his previous letter. The charges for the two principal services, that is, transfer of passengers together with hand baggage by motor vehicle and the transfer of checked baggage by truck had been properly covered in his original proposal.

However, there were other special charges which were discussed and which would have to be further confirmed by him. These latter charges are indicated by an asterisk mark."

Then the memorandum goes on to speak of equipment as follows:

"It is intended to purchase, to start operation, about 50 eight passenger station wagons equipped with two-way radio control, power steering, power
703 brakes and air conditioning. Baggage will be stored on top of vehicle in rack properly protected from the elements by a draw tarpaulin. In addition he intends to purchase ten 22 or 32-seat passenger buses."

There is a reference to the schedule and a reference to baggage. Then under charges for service:

"Regular transfer services. First year, July 1955-1956, $1.20 per piece, second year, July 1956-1957, $1.22 per piece, third year, July 1957-1958, $1.23 per piece. The fourth and fifth years, an increase of one cent per coupon for each five-cent increase in direct wage cost. Discussion with Mr. Keeshin developed his opinion that direct wage increase for each of these years would not be more than ten cents a year or two cents a year increase in the coupon rate. This would make the coupon rate for July 1958 to 1959, $1.25, and July 1959 to 1960, $1.27."

704 By Mr. Freeman:

Q. Then there is a little pencil notation which I would like you to read for me. In the original it was in red. What does it say and in whose writing is it?

A. (Reading)

"Suggest cut out."

It is not in my handwriting. If that is on the original, it is not mine.

Q. Did you previously identify that as Mr. Whittington's handwriting.

A. No, sir. I am not sure that it is.

By Mr. Freeman: Do you have the original of that document?

By the Witness: Let me see the original.

By Mr. Freeman:

Q. Yes. Is that Mr. Whittington's handwriting?

A. This is Mr. Whittington's copy.

Q. Did he discuss this remark with you?

A. No. This is the first I saw this, when these papers were all brought in.

Q. What does this mean to you?

By Mr. Thompson: Objection.

By the Witness:

A. I can't say. This is Mr. Whittington's hand-
705 writing. I had nothing to do with it.

By Mr. Freeman: Then there is some reference to baggage and schedules, special service, names, and general remarks.

"Mr. Keeshin also advised that he intended to go into the field of pick up and delivery of baggage in the Chicago area as well as handling large movements of baggage for groups such as shows, sports, or any other groups of individuals requiring such special baggage transfer. However, these services, of course, are out of the scope of our contract and are special arrangements which he intends to set up.

"Mr. Keeshin advised he intended to set up a special company to be incorporated in Delaware or Illinois with at least a $200,000 working cash fund, and could secure additional $500,000 for this fund if found necessary.

"It is the intention to take over as much of the drivers and other minor personnel of the Parmelee

company as would fit into his organization and will
706 pass the physical requirements. In addition, Mr. Keeshin informed us that the official personnel will be composed of those well versed in the handling of passengers and baggage, and that he would give this company his personal attention until such time as it would be functioning smoothly.

"Parmelee Transportation Company: Mr. Markin referred to his original proposal of March 15—"

By Mr. Thompson: 1955.

By Mr. Freeman: Excuse me. 1955.

(Reading):

"The first discussion was given to item 3, which covered the escalator increase in per coupon cost commencing with July 1, 1956, but upon which no ceiling was indicated. This item was canceled in its entirety and carried with it cancellation of item 4. Again there are some special charges which were discussed and not covered in his proposal and would have to be confirmed. These charges are indicated by asterisk mark.

707 "Passengers, Type: He intends to purchase 30 12-passenger limousine type vehicles similar to the 20 which he now has in operation, but which will have power steering and power brakes. Also he will retain a number of the 7-passenger limousines now in service. It is expected it will take at least twelve months to complete the replacement. Baggage will be stored in the rear of these new vehicles, the same as in the present type operated.

"Schedule: Present schedule which provides for the meeting of all trains will, of course, be maintained."

Then there is some discussion of baggage.

"Charges for service: Regular transfer service first year, July, 1955 to 1956, $1.20. Commencing

with July 1, 1956, adjustment of coupon rate of one cent for each increase of three cents per hour in wages of driver employees will continue yearly thereafter until the expiration of the contract, December 31, 1961, with a maximum charge of $1.25 per coupon.

708 "Discussion with Mr. Markin determines his opinion that he could possibly hold yearly increases to five cents to direct wages. Under this plan, our rates could increase two cents a year, but not above the ceiling of $1.25. Also there is the possibility of an increase of more than five cents in direct wages a year, which would increase our coupon rates accordingly, but again, the ceiling is $1.25.

"Special Services: Baggage remains."

and so forth.

"General Remarks: Mr. Markin advised that the new equipment mentioned above, which will be purchased and put in service as promptly as available, will cost in the neighborhood of $500,000.

"General Information: The new members of the subcommittee advised, as a whole, that it would be necessary for them to present both of the above proposals to their management before they would be in

709 position to advise a recommendation of either. Therefore the subcommittee will again meet at the Union Station at 10:00 a.m., Friday, June 3rd, at which time their report to all Chicago Terminal Lines will be composed as well as their recommendation, if any."

By Mr. Freeman:

Q. Mr. Nelson, did you have occasion to write a memorandum commenting upon the P-rmelee proposal of March 15, 1955?

A. I don't recall.

By Mr. Freeman: I ask to have marked for the pur-

pose of identification as Plaintiff's Exhibit 26 this three-page memorandum dated March 23, 1955, and bearing the initials R. E. Coleman, addressed to Mr. Whittington.

(Thereupon said document was marked Plaintiff's Exhibit 26 for identification.)

By Mr. Freeman:

Q. Will you look at Plaintiff's Exhibit 26, and tell me whether you prepared that memorandum?

A. I did.

Q. Was it prepared in the normal course of your 710 functions on this committee?

A. That is correct.

Q. Was it prepared shortly after you had heard and analyzed the Parmelee proposal?

A. It was.

Q. Did it set forth to the best of your ability your reactions to that proposal for information to the Baltimore office?

A. That is right, what I though was pertinent at that time.

Q. Was this prepared in the regular course of business and put in your railroad file?

A. That is right.

Q. And sent on to Baltimore?

A. That is right.

By Mr. Freeman: I offer Plaintiff's Exhibit 26.

By Mr. Thompson: Well, in the first place, your Honor, the exhibit is making reference to the Parmelee proposal by numbered paragraphs, and of course, in a good many respects it is unintelligible without the Parmelee proposal to go along with it.

711 Furthermore, it is objected to except as to the Baltimore and Ohio Railroad.

By the Court: It may be received only as against the Baltimore and Ohio and the witness—he is not a defendant?

By Mr. Freeman: Just the defendant railroad.

By the Court: Just the railroad.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 26.)

By Mr. Freeman: I think Mr. Thompson's first point is well taken. Now that the exhibit is in evidence, I will save the reading of it until we have put the Parmelee proposal in so that we can cross-reference the paragraphs.

By Mr. Freeman:

Q. I think I forgot something very pertinent in reading plaintiff's Exhibit 25. I would like to read to you a sentence that I did not read.

I read from Page 2 of this memorandum:

"There is still some question as to whether or not our baggage room employees will load or unload the 712 spotted trailers without cabs. This is permissible insofar as our company is concerned. (Letter of Mr. J. F. Whittington, December 4, symbol 8, 1954) Or his station agent and drivers will perform this service."

Now what did that mean, Mr. Nelson?

By Mr. Thompson: I should say the expression is perfectly simple.

By Mr. Freeman: I can remember this witness' testimony to the contrary.

By Mr. Keating: Your Honor, before he stated he was going to impeach the witness, and I object to his comment here again.

By Mr. Freeman: I withdraw the remark and apologize to the Court.

By the Court: That may be stricken.

By Mr. Keating: Thank you.

713 By Mr. Freeman:

Q. Mr. Nelson, you have had an opportunity to read that sentence, and it is simple, as Mr. Thompson suggests.

Now isn't it true, now that you have refreshed your recollection, that your previous testimony in this regard was erroneous?

A. Apparently so, but it is a matter in which I was very definite, and that is possibly why it sticks out in my mind very strongly.

Q. I am not seeking to raise any personal problem. But the fact of the matter is that on January 5, 1955, it was your opinion that the Keeshin proposal was not sufficiently decreased from the present rate to warrant any change from Parmelee, and that had reference to the coupon rate that Keeshin was proposing and nothing else, isn't that true?

A. That is right.

Q. And that the question of whether or not Keeshin's employees or the railroad employees were to unload and load these trailers had still not been settled as of May 20?

A. Apparently not. The memorandum doesn't lie.

By Mr. Freeman: I agree. Thank you.

714 By Mr. Freeman:

Q. Now you also attended a meeting of the committee on June 3rd, 1955, did you not?

A. I did.

Q. And did you prepare memorandum of that meeting?

A. I presume I did.

By Mr. Freeman: I ask to have marked for the purpose of identification as Plaintiff's Exhibit 27 this three-page document in handwriting, previously identified as Nelson Exhibit 15, of the meeting on June 3, 1955, and as Plaintiff's Exhibit 28 for identification, this three-page typed memorandum, also dated June 3, 1955.

(Thereupon said documents were marked, respectively, Plaintiff's Exhibits Nos. 27 and 28 for identification.)

By Mr. Freeman:

Q. Mr. Nelson, I show you first this document marked Plaintiff's Exhibit 27, and ask you whether that is the memorandum prepared in your handwriting during the course of the June 3rd meeting and represents your
715 best recording of what transpired at that meeting or the high points thereof.

A. That is right.

Q. Was this prepared in the normal and regular course of your operations as a representative of the Baltimore and Ohio Railroad?

A. That is right.

Q. And was placed in the files of the Baltimore and Ohio Railroad?

A. That is correct.

Q. And is the same thing true of Plaintiff's Exhibit 28, except that Exhibit 28 is a typed copy of Exhibit 27, which were your penciled notes at the meeting?

By Mr. Thompson: Of course, it isn't the same, obviously, by a long shot.

By Mr. Freeman: All right.

Let me offer first Exhibit 27. I was just trying to shorten this. It is not the same, but from the same source.

By Mr. Thompson: Yes, the same man dictated the two of them.

By Mr. Freeman: May I offer first Plaintiff's Exhibit 27, the penciled notations?

By Mr. Thompson: If the Court please, the pen-
716 ciled notations are, as Mr. Nelson has previously expressed it, shorthand notes. They are simply notes,

apparently from the face of them, of things that came up and were discussed, and doesn't record any opinion of Mr. Nelson nor any judgment that he reached. He is just recording in shorthand headlines what was expressed at the meeting.

I think it isn't binding on anybody, and certainly no one besides the B&O.

By the Court: My judgment, Mr. Freeman, is that the witness is on the stand now. Unless that is used to impeach him as an adverse witness, it is merely corroborative of what he is testifying to.

By Mr. Freeman: Excuse me, your Honor, but this witness has prepared a memorandum of what transpired at a meeting, and certainly the memorandum is better evidence of what transpired than his recollection is now.

I have a right, as this man is a representative and managing agent of one of the defendants here, this memorandum contains admissions against interest, as I will point out to your Honor.

717 By the Court: I will let it go in as against his own company.

By Mr. Freeman: That I understand, and I don't have to continue to say that we regard the thing as broader, but we will—

By the Court: That is right. If you are putting it in on that basis as admission against interest, and there are any such admissions, they may go in as against his own company, and not binding on the others.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 27.)

By Mr. Freeman:

Q. With respect to this Plaintiff's Exhibit 27, let me just ask you about the notation in the right-hand corner on the first page.

Can you read that?

By Mr. Thompson: At the bottom?

By Mr. Freeman: The bottom.

By the Witness:

A. (Reading)

"Fourth and fifth year rate to be negotiated. Maxi-
718 mum fourth year $1.26. Fifth year, $1.29."

By Mr. Freeman:

Q. And the initials there, "J.F.W.," is that right?

A. "J.F.W."

Q. Now did this have reference to the Keeshin proposal? Was this the section of your memorandum that dealt with the Keeshin proposal?

By Mr. Thompson: Of course, I don't know what he is using this for, whether it is for recorded past recollection or what. The witness—

By the Court: I am only admitting it as admission against interest.

By Mr. Freeman: It also records what happened at the June 3rd meeting, your Honor.

By Mr. Thompson: But you can't—

By the Court: I think on that basis, Mr. Freeman, the rules of evidence are that the witness is on the stand, and you may interrogate him fully on what happened.

719 By Mr. Freeman: I will also interrogate him. Let me ask him about this admission against interest.

By the Court: If you have an admission against interest, you are entitled to have it in, but that is all.

By Mr. Freeman: I don't agree that that is the rule. I can put in what happened at the meeting by writing or oral testimony, your Honor.

By Mr. Freeman:

Q. Mr. Nelson, let me ask you whether those remarks were made by Mr. Whittington in connection with the Keeshin proposal, and that Mr. Whittington indicated

that the Keeshin proposal might result in a rate in the fifth year of $1.29?

By Mr. Thompson: Of course, this is Mr. Whittington's notes apparently. I don't know what it is.

By Mr. Freeman: He recorded what Mr. Whittington said.

By the Court: The question is, did Mr. Whittington say it in his presence and—

720 By Mr. Freeman: And did he record it in the memorandum.

By Mr. Meserow: It is not recorded. It is in dispute, he says. The document speaks for itself.

By the Court: I will let him answer. If you call for a conversation as to what he said at the meeting, he may answer.

By the Witness:

A. I am not sure, your Honor, just what he covered.

By the Court: The question is, did you hear him say it at the meeting?

By the Witness: I do not recall how or why this notation was put here. I frankly do not. Too much time has passed unless—

By Mr. Freeman:

Q. Did you recall at the time of your deposition, Mr. Nelson? Did you testify with respect to this item at the time of your deposition?

A. I don't recall.

Q. Mr. Nelson, I call your attention to Page 1413 and 1414 of your deposition, and ask you whether you didn't testify as follows:

721 "Q. Let's go back to the bottom of Page 1 for a minute. Would you tell me what the notes in the lower righthand corner of that page say?

"A. (Reading) 'Fourth and fifth year rate being negotiated. Maximum fourth year, $1.26. Fifth year, $1.29.'

"Q. Isn't there something in parentheses after the $1.29?

"A. J.F.W.

"Q. Do you know what that refers to?

"A. Evidently Mr. Whittington brought up the question about the rates in the fourth and fifth years, and if there was any definite information."

Was that your testimony then?

A. If it was four years ago, it still is now.

Q. Is it true that Mr. Whittington brought up the question of the Keeshin rate possibly going to $1.29 in the fifth year?

By Mr. Thompson: That isn't what he said.

By Mr. Freeman: I am asking him now.

By the Witness:

A. No, sir.

By Mr. Freeman:

722 Q. What is that?

A. No, sir.

Q. What reference did Mr. Whittington make to $1.29?

A. I can't recall at this late date. If I didn't know four years ago, I sure don't remember today.

Q. You did say four years ago that evidently Mr. Whittington brought up the question about the rates in the fourth and fifth years, didn't you?

Did Mr. Whittington bring up these figures of $1.26 and $1.29 for the fourth and fifth years of this Keeshin proposal?

A. What is in the deposition, whatever is in there, then, applies now, because I don't remember any differently now than I did then.

Q. All I am trying to do is have you be consistent with what you then testified.

By Mr. Owens: It is consistent. He is asking him to speculate.

By the Court: It may be stricken.

By Mr. Freeman:

Q. Is it also true that at this meeting of June 3rd that the committee first met and voted for Keeshin, and then called him into the room to clarify certain major
723 issues that had not as yet been determined?

A. He was called into the meeting to clarify certain conditions, but I don't think they were major. There were some minor items that needed to be clarified definitely.

Q. Are you agreeing with me that this decision was first made, the vote was first taken by the committee, they voted for Keeshin, and then called him in for clarification?

By Mr. Thompson: There is no basis for that assumption.

By Mr. Freeman:

Q. Are you agreeing with that remark? I am asking you that question. You have left that out of your answer.

A. Well, in substance, the understandings that the subcommittee had and reported to the Chicago Terminal Lines was acceptable, but there were certain conditions apparently that needed clarification.

Q. I am sorry, Mr. Nelson, but you are confused. This June 3rd meeting is the meeting of the committee of six as augmented by your people. Now is it true that the committee assembled, and I will add to this—

A. I was thinking of June 13th.

724 Q. That is right, you were confused. The committee assembled, Mr. Whittington moved to accept Keeshin, there was a vote of the committee unanimously for Keeshin, and then they called him on the telephone and had him come over to the committee meeting to clarify certain issues, is that correct?

By Mr. Thompson: We object to a question assuming facts which are not in evidence. There is no such evidence of such a routine.

By the Court: If he knows of his own knowledge, he may answer.

By the Witness:

A. I do not recall at this late date if that is the fact.

By Mr. Freeman:

Q. Didn't you memorialize that in your memoranda?

A. If it is in here. I say, without reading this, these speak for themselves.

By Mr. Freeman: You see, your Honor, that is the reason I need the memoranda to refresh this witness' recollection.

By the Court: Who is stopping you from referring to them?

By Mr. Freeman: Nobody is.

725 By Mr. Keating: It is just another one of his comments that I have been objecting to all afternoon.

726 By Mr. Freeman:

Q. I ask you to look at Plaintiff's Exhibit 28. Was this prepared by you after you returned from the June 3rd meeting?

A. It was.

Q. And did you utilize the penciled notes that have been identified as Plaintiff's Exhibit 27 in the preparation of this typed memorandum?

A. To a great extent, yes.

Q. And was this memorandum prepared in the normal course of your railroad business and placed in the file in Chicago and copy sent to Baltimore?

A. It was placed in our file, and I am sure it was sent to Baltimore.

Q. And does it, as nearly as you can and humanly can, accurately set forth what major developments occurred at the June 3rd meeting as you saw it?

A. That is the purpose of it.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 28.

By Mr. Thompson: Well, with the same limitation, receivable against the B&O, it is all right.

By the Court: The same ruling, against his own 727 company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 28.)

By Mr. Freeman:

Q. Now I ask you to look at Exhibit 28, and ask you to answer not my last question, but the question I did not get an answer to. Let me put it to you, if you don't recall.

Is it true that the committee met, that Mr. Whittington moved the acceptance of Keeshin, that the committee approved Keeshin, and then called him in to discuss issues that remained undetermined?

A. May I have Exhibit 27, too?

Q. Oh, yes. I am sorry.

A. One refers to the other.

By Mr. Thompson: There is nothing in this memorandum that says any such thing, if the Court please.

By the Court: The witness will so answer if he finds that.

By Mr. Freeman: That is a gratuitous remark of Mr. Thompson's that was unnecessary.

By Mr. Freeman:

728 Q. I am waiting for your answer, Mr. Nelson.

A. Oh, well, from reading both the penciled memorandum and this memorandum here, it would appear that there were certain portions of the Keeshin proposal which needed confirmation, and that the members at the meeting voted for the Keeshin proposal but requested that he ap-

pear to further definitely confirm what our understandings were because it had not been submitted as yet in writing.

Q. Hadn't the chairman of your negotiating committee, Mr. Bone, taken the very firm position that no proposals would be accepted and no suggestions would be accepted unless they were in writing?

A. We had asked, or rather he had asked, and the committee had agreed, that they should be firm bids.

Q. Then is it a fair statement to say that the committee first voted for Keeshin and then asked for, as you put it, confirmation of certain elements of his proposal?

By Mr. Meserow: On what date?

By Mr. Freeman: On June 3, 1955.

I thought you had answered that already.

By the Witness:

729 A. There are some points that were verbally discussed on which there was no confirmation, but the proposal as a whole, as had been submitted in writing, is what was acceptable.

730 Q. All right. Now, let's see what points were discussed. Did the committee discuss with Mr. Keeshin and seek to secure a definite commitment with respect to the coupon rate for the fourth and fifth years?

A. That is contained in this memorandum here.

Q. Would you answer it without the memorandum and just use it to refresh your recollection?

Did the committee seek to get a firm coupon cost rate from Keeshin for the fourth and fifth years?

A. They did.

Q. And did Keeshin refuse to give them that firm rate?

A. No. It just states here:

"He further advised he would expect a verbal understanding that the rate would not exceed $1.27 a coupon at the fifth year."

Q. He refused to give it to you in writing, then, at this time?

A. At that time for reasons of his own.

Q. Later you did negotiate a contract with Keeshin so that the fifth year was $1.27, wasn't it?

A. That is right.

Q. What was the maximum rate that Parmelee had
731 proposed through December, 1961, as contained in your memorandum which has been identified as Plaintiff's Exhibit No. 25? Wasn't it $1.25?

A. That was his last proposal.

Q. That is right. Now, lt me ask you another question, and when you say that was "his" you mean Parmelee's?

A. Parmelee, yes.

Q. Did Keeshin come into the meeting and advise the committee that he had ordered his equipment on June 1st, 1955, two days before?

A. At this June 3rd meeting?

Q. Yes. Look at your penciled notes for June 1.

A. That is right.

Q. Did he tell you what he had ordered?

A. What he had ordered?

Q. Yes, what kind of equipment?

A. I have here "various equipment" and I presume it is correct.

Q. What did he order?

A. Fifty Ford six-passenger station wagons, ten Ford eight-passenger station wagons, 25 tractors, two station wagons for remains, forty 20-foot trailers.

Q. Did you have occasion to inspect some of Keeshin's proposed equipment prior to the June 3rd meeting?

732 A. I did.

Q. Had you reported to your superior, Mr. Coleman, who was the Chicago superior, dissatisfaction with some of that equipment?

A. Some aspects of it, yes.

Q. You were dissatisfied with the Volkswagens that he sought to buy, weren't you?

A. That is right.

Q. You felt the fact there weren't exits on both sides presented an element of a hazard, unsafety for passengers, didn't you?

A. It wasn't—they couldn't be used advantageously in our station.

Q. And you were worried also about the trailers, that the tailgates wouldn't fit in your station?

A. I wasn't worried about it. It was a problem that had to be solved.

Q. You felt it wouldn't fit your station either?

A. It had to be solved. It meant the present loading platform would not have sufficed. There was nothing to be worried about.

Q. In other words, you would have to change the station or change the equipment, wouldn't you?

A. It was just a question of a loading platform, not changing the station.

733 Q. Was this of concern to you that you would have to expend funds?

A. It was a problem that could have been worked out.

Q. Money will solve any problem?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection, your Honor.

By Mr. Freeman:

Q. I ask you, Mr. Nelson, would this involve money on behalf of the Baltimore and Ohio Railroad?

By Mr. Keating: I object. That was not his question.

By the Court: He may answer that.

By the Witness:

A. If it had to be done, yes. It was a problem to be solved.

By Mr. Freeman:

Q. Were you satisfied or did you express concern with Keeshin's proposal to use buses?

A. Well, the buses had to be limited to size in our depot if they were used, even for group parties.

Q. Did you ever express this concern to Mr. Keeshin?

A. I don't recall. I presume I did.

Q. When did you inspect Keeshin's equipment; do you remember what day it was?

734 A. June 2nd.

Q. And June 1st he had already ordered the equipment?

A. So he stated. I don't know.

Q. Was there any discussion of the question of who was to load and unload the trailers at the railroad stations at this June 3rd meeting?

A. No, there is nothing in either the penciled or typewritten memorandum, so it must have been something that had been already concluded.

Q. Or it could have been something that had not as yet been determined and was not determined until a later date?

By Mr. Thompson: Objection. That is pure speculation.

By Mr. Freeman: He speculated one way, and I am asking him to speculate another.

By Mr. Thompson: he will quit waving the flag so much, we can see th witness.

By the Witness:

A. I don't recall.

By Mr. Thompson: Or else he has his hands in his pocket.

By Mr. Freeman: I do feel your Honor should restrain Mr. Thompson. He may have had an exalted posi-

735 tion sometime or other, but he doesn't act it now. I am trying to examine this witness in all seriousness. If

Mr. Thompson wants to engage in bar room tactics, I can accomplish that, but not here.

By the Court: I will prevent it.

By Mr. Thompson: That is a fine comment from one who has been performing like you have all day.

By Mr. Freeman:

Q. Mr. Nelson, we had previously discussed Mr. Whittington coming to the May 19th meeting. Did Mr. Whittington come to the June 3rd committee meeting?

A. Yes, he did.

Q. Do you recall when he arrived for that meeting?

A. He arrived that morning.

Q. Did he talk to you before the meeting?

A. No, sir, he did not.

Q. Did he again dominate the meeting?

By Mr. Thompson: Well, that is a conclusion.

By Mr. Freeman: All right.

By Mr. Freeman:

Q. Did he dominate the meeting?

736 A. He was very active.

By Mr. Meserow: I object to that question.

By Mr. Thompson: It is a conclusion.

By the Court: He said he was very active. That was his answer.

By Mr. Thompson: That is what he was there for. He didn't come from Baltimore for fun.

By Mr. McConnell: I move to strike out the Judge's testimony.

By the Court: Yes. Let's confine ourselves to questions and answers and objections and rulings.

By Mr. Freeman:

Q. Mr. Nelson, did you previously testify that Mr. Whittington dominated the committee meeting of June 3rd?

A. June 3rd or May 19th?

Q. June 3rd now.

A. I don't think I said June 3. On the May 19th meeting I said he was a prime factor. I will still reiterate he was very active at the June 3rd meeting as well.

Q. To go back to the May 19th meeting, after it was completed you did prepare this memorandum of May
737 20th, which has been identified as Plaintiff's Exhibit No. 25, and you handed it to Mr. Whittington?

A. That is correct.

Q. Did you also receive a telephone call from Mr. Sidney Bone on May 20th and prepare a memorandum which you handed to Mr. Whittington?

To refresh your recollection I will have marked, for the purpose of identification, as Plaintiff's Exhibit No. 29, this one-page memorandum from Mr. S. F. G. Nelson to Mr. J. F. Whittington, dated May 20, 1955, and coded as B&O-45.

(Thereupon said document was marked Plaintiff's Exhibit No. 29 for identification.)

By the Witness:

A. I did.

738 By Mr. Freeman: I also ask this one-page memorandum dated May 20, 1955, be marked for the purpose of identification as Plaintiff's Exhibit No. 30.

(Thereupon said document was marked Plaintiff's Exhibit No. 30, for identification.)

By Mr. Freeman:

Q. Was Plaintiff's Exhibit No. 29 prepared by you, Mr. Nelson?

A. That is correct.

Q. And was it furnished to Mr. Whittington?

A. Right.

Q. Do you know if Mr. Whittington prepared Plaintiff's Exhibit No. 30?

A. I do not know.

Q. Whose handwriting is on this Exhibit No. 30?

A. It appears to be Mr. Whittington's, but I don't know for sure.

By Mr. Keating: Mr. Freeman, is No. 30 the memo of Mr. Whittington of May 20?

By Mr. Freeman: B&O 46, yes.

By Mr. Thompson: Are you using two of them?

739 By Mr. Freeman: Yes. I offer in evidence Plaintiff's Exhibit No. 29. Is there any objection to that?

By Mr. Keating: That is No. what?

By Mr. Freeman: No. 45.

By Mr. Keating: All right.

By Mr. Freeman: And Plaintiff's Exhibit No. 30—I will offer them together.

By Mr. Meserow: I object to them as not binding on my clients.

By Mr. Keating: The same ruling on this exhibit as to the B&O?

By the Court: I am waiting for a word from Judge Thompson.

By Mr. Thompson: Well, these two documents are identical, except in form. I suppose he has a reason for putting the two of them in. They record hearsay, but I suppose they are binding on the B&O only.

By the Court: Same limitation, same ruling.

(Said documents, so offered and received in evidence, were marked Plaintiff's Exhibits 29 and 30.)

740 By Mr. Freeman:

Q. Now, Mr. Nelson, I ask you whether it isn't true that there is on Plaintiff's Exhibit No. 30 a tabulation of the Parmelee proposal by years and alongside of it a tabulation of the Keeshin proposal in rates by years.

A. That is what the "K" means there, the man's handwriting.

By Mr. Freeman: I would like to read this and show it to the jury while I am reading it, if I may. I am reading from Plaintiff's Exhibit No. 30:

"Mr. Sidney Bone, Chairman of the subcommittee, called me at 4:55 p.m. today advising that Mr. Markin had changed his formula for the coupon charges as follows: Basic charge, $1.20 effective July 1, 1955. The maximum rate that would be charged thereafter would be, 1955, the first $1.20, and the column under "K" $1.20.

"July 1, 1956, $1.22 and $1.22. July 1, 1957, $1.23 and $1.23 under 'K'. July 1, 1958, $1.24 and $1.25
741 under 'K'. July 1, 1959, to June 30, 1960, $1.25 for Parmelee and under 'K' $1.27 with an asterisk in the last two, based on possible ten-cent wage increase."

Then there is the notation at the bottom of the memorandum in what purports to be Mr. Whittington's handwriting:

"Suggest advise committee after talks with his labor people would be no increase beyond 1957 for $1.23 rate would continue last two years of contract."

742 I read further from the memorandum as follows:

"The rate would increase one cent per coupon for each three cents of wage increase but not to increase the maximum rate as shown above."

By Mr. Thompson: That refers to the Markin proposal.

By Mr. Freeman: Yes.

I am skipping, and read as follows:

"Mr. Bone advises that he was getting this information out by mail today. I believe Mr. Markin is doing this to protect himself from the unions getting too great an increase in any one year. This would be part of his bargain that the carriers would only allow him

to increase his rate so much each year. J. F. Whittington."

By Mr. Freeman:

Q. Do you know what Mr. Whittington was referring to when he made the notation at the bottom of this memorandum:

"Suggest advise committee after talks with his labor people . . ."?

743 A. I would have no idea.

Q. Did he discuss that with you at your meeting when you met with him?

A. No, sir, he did not.

Q. Did he ever have any discussion with you about the Chicago transfer situation, Mr. Nelson?

A. Very seldom, because of the memorandum forms which I had sent to him after each meeting, and apparently he concluded they were complete in themselves.

Q. Did you at any time suggest or recommend Keeshin's proposal be accepted?

A. I made no recommendation in any of my memorandums. They were strictly unbiased, merely a report of the pertinent facts as I saw them.

Q. I agree with that, too.

By Mr. Freeman: I would also like to have marked, for the purpose of identification as Plaintiff's Exhibit No. 31, this three-page—well, I had better mark No. 31 as a two-page memorandum of June 21, 1955 from Mr. Tilquist to Mr. Nelson and as Plaintiff's Exhibit No. 32 a one-page memorandum from Mr. Nelson to Mr. Coleman dated June 23rd, 1955.

744 (Said documents were marked, respectively, Plaintiff's Exhibits Nos. 31 and 32 for identification.)

By Mr. Freeman:

Q. Before asking you about Exhibits 31 and 32, Mr. Nelson, is it true that the Baltimore and Ohio Railroad at

present is actually paying Keeshin $1.27 for the transfer service?

A. It is.

Q. And that last year you paid Keeshin $1.25 for the transfer service?

A. That is right.

Q. And in both instances these rates are in excess of the maximum ceilings in the Parmelee proposal for the two years involved, is that right?

A. I believe so.

Q. Now Mr. Nelson, I ask you whether you in the normal course of your railroad business received Plaintiff's Exhibit No. 31 from Mr. Tilquist.

A. This is the memorandum to me.

745 Q. Did you receive it in the normal course of business with your railroad?

A. That is right.

Q. Did you, in the normal course of your functions, prepare Plaintiff's Exhibit No. 32, dated June 23, 1955?

A. That is right.

Q. Was this memo prepared for the files and transmitted to your superior, Mr. Coleman?

A. That is right.

Q. And it was part and parcel of your regular functions in connection with the Chicago transfer situation, was it not?

A. That is right.

By Mr. Freeman: I offer in evidence Exhibits 31 and 32 against the Baltimore and Ohio Railroad.

By Mr. Thompson: If the Court please, these exhibits are, both of them, documents after the vote that was taken on June 13th by the terminal lines awarding the contract to Mr. Keeshin's company, and they have to do with negotiations or working out arrangements.

746 This memorandum from Mr. Tilquist—by the way, Mr. Nelson, he is the baggage agent over at the station?

By the Witness: At the Grand Central Station, that is right.

By Mr. Thompson: This memorandum from Mr. Tilquist to Mr. Nelson, which is offered as 31, has to do with working out arrangements and the formulation of the contract after the thing was over and certainly could have nothing to do with the matter in controversy, it seems to me.

By the Court: Is this subsequent?

By Mr. Freeman: You will recall the witness' testimony with respect to the loading and the unloading of trailers. This memo specifically has reference to that testimony. It is true that it occurs on June 23, 1955, but as we will determine, it has—this witness has some very specific knowledge.

By the Court: From whom is that?

By Mr. Freeman: The second memo, No. 32, was prepared by Mr. Nelson.

747 By the Court: That may be received.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 32.)

By the Court: And the other one?

By Mr. Freeman: From his own company.

By the Court: Both of them will be limited to his own company and received.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 31.)

By Mr. Freeman:

Q. Have you had occasion to look at Plaintiff's Exhibit No. 31, the memo that you prepared on June 23rd?

By Mr. Thompson: Mr. Tilquist prepared that.

By Mr. Freeman:

Q. I am sorry; 32, then.

A. Yes, sir.

Q. Does that refresh your recollection that the matter of who was to load and unload baggage, whether it was Keeshin employees or the railroad employees had still not been settled as of June 23rd?

748 By the Court: I presume 1955?

By Mr. Freeman: 1955, yes.

749 By the Witness:

A. Well, I think there is a question in doubt, because in my mind I undoubtedly felt one way because I saw in my memorandum:

> "It would appear from the attached that Mr. Keeshin is not quite set in the arrangements for the handling of checked baggage between stations."

I evidently had different thoughts in the matter up to that time.

By Mr. Freeman:

Q. Let me read what I regard as significant in this memo to the jury, if I may, the second paragraph, Mr. Nelson.

> "In addition, I feel that Keeshin is hedging from the original arrangement of his own people loading and unloading trailers except after their forty-hour period when our baggage room employees can perform this service. They are now asking that our baggage room people perform this service at all times. We may be able to get by at our stations without additional
> 750 personnel, but I don't think this would be possible in the larger stations such as the Union Station, the North Western, and so forth. Furthermore, if our baggage room way bills as well as unloading and loading this baggage, it would lift the entire responsibility from Keeshin as to the condition of baggage since at no time would his personnel handle the same. I can see where we can way bill it, and they

would accept exceptions as noted on our way bill but do not feel we should give in to any arrangement whereby the complete station handling is by our baggage room personnel. I am sure Keeshin set up his costs on the basis of his personnel loading and unloading baggage because at no time did the subcommittee say our baggage room people would perform this work. Therefore, what the mutual savings would be, I cannot understand, because if the carriers have to add more personnel in the baggage room it would be the railroads who would be losing money and Keeshin alone making a saving."

751 There is a notation on the right margin. Is that in your handwriting, Mr. Nelson?

By Mr. Thompson: The left margin, you mean?

By Mr. Freeman: Yes, the left margin.

By the Witness:

A. No.

By Mr. Freeman:

Q. What is the notation, and do you know who put it in?

A. No. It says:

"8:30 a.m. to 7:00 p.m."

At this time I don't recall what that might mean.

By the Court: I presume you will take some time to cross examine?

By Mr. Thompson: Yes.

By the Court: All right.

I guess the jury have worked hard enough.

By Mr. Freeman: I have nothing further of this witness in any event.

By the Court: It will take some time anyway.

Have a nice evening, and again I want to remind you to keep it all to yourselves and discuss it with no

752 one, and I will see you tomorrow morning at 10:00 o'clock.

(The following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: 10:30 for you gentlemen.

(Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Thursday, April 28, 1960, at 10:30 o'clock a.m.)

753 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Thursday, April 28, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

754 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

755 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al., the case on trial.

(Whereupon the following proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: Good morning, gentlemen. Are you ready for the jury?

By Mr. Meserow: If the Court please, I would like to address the Court on a motion on behalf of Mr. Keeshin.

Yesterday, in the court room, Mr. Keeshin was served with a subpoena duces tecum by Mr. Freeman. Of course, we have had him here every single day, but I didn't even get the courtesy of asking to have my client available with his records.

I am making a motion to quash the second paragraph of this subpoena.

The first paragraph has to do with originals of all documents, papers, memoranda and records marked as Keeshin exhibits at the deposition of John L. Keeshin
756 before the Honorable Augustine J. Bowe, a Special Master appointed by the Court, Exhibits 2 to 59.

We have no objections to producing those.

Incidentally, they were made available under a protective order by Judge Sullivan to Mr. Freeman in my office, of which he made notes and saw them all. We have no objection, and we have them here now.

757 The second paragraph is the one that we as asking to quash. No. 2 reads:

"All business and financial records and books of account maintained by or for Railroad Transfer Service and prepared during or for any part of the period from October 1, 1955, to date, including all statements of profits and losses, all books of original entry, ledgers, journals, records of employees and records of the volume of transfer and pickup and delivery business performed by and gross revenues realized from such business by Railroad Transfer Service, Inc., during the period between October 1, 1955 and this date."

Your Honor, if we had to bring all of these in, we would have to have a truck to do it. Mr. Keeshin is in the trucking business, and that is not the problem.

The problem is that the books and records of the Railroad Transfer Service, which, incidentally, were voluntarily made available—

By the Court: The Railroad Transfer Service, is that corporation operating?

758 By Mr. Meserow: Yes, operating the transfer service. They are a party defendant to this case, but the books and records, Mr. Freeman requested the examination of the books and records, and we obtained a protective order from Judge Sullivan about it, and they were made available to Fred Andrews, a certified public accountant, who examined them a couple of years ago, and just shortly before this trial started Mr. Freeman wanted the most recent ones, which were not covered by the order, but we voluntarily let Mr. Andrews examine them, so he has all the records of the profits and the losses and the revenues and anything else he wanted.

Now, your Honor, No. 1, the reason we are asking to quash this second paragraph is that it is not material to the issue of public injury. Whether or not Railroad Trans-

fer made a profit or suffered a loss, what their payroll records were, what their volume of pickup and delivery of baggage was, that has nothing to do with the public injury, and I am asking that that be quashed.

If your Honor does not wish to proceed on that theory of quashing this second paragraph, then I will add an additional reason why it should be quashed.

759 By the Court: First, let me hear from Mr. Freeman.

By Mr. Meserow: I am not through, your Honor.

I have here a protective order entered by Judge Sullivan on June 27, 1958, in which he said that this information shall only be given to the attorneys in the case or their accountants, and nobody else on the outside.

The reason for that was advised, because we pointed out to the Court, and Mr. Freeman can't deny it because I have here the transcript of the record, in the course of this trial, after the case was on, in the course of the pendency of the case, there was a long article appeared in Drew Pearson's column about this case. It was full of fabrications, misrepresentations, and misstatements.

In addition, your Honor, it quoted three excerpts from letters written by Judge Thompson's clients from the railroad files—I forget the names of the railroads, but I have the copy here. Three railroad letters which were taken in depositions by Mr. Freeman, and he, besides the railroads, were the only ones that knew about it.

So it must have come from Mr. Freeman and nobody else. Judge Sullivan asked Mr. Freeman, "Did you talk to Drew Pearson?" and Mr. Freeman, in open court,

760 admitted that he had talked to Drew Pearson. I think he denied giving him this information, but that was the only source.

Now, if your Honor please, as a result of that, Judge Sullivan criticized Mr. Freeman for doing what he did

in a pending case, and he entered this protective order. He did not permit Mr. Freeman to make photostatic copies of these records and exhibits of Mr. Keeshin or of his books and records of the Railroad Transfer Service, as he had done with all the railroad files.

We are a competitor. Railroad Transfer is a competitor of Parmelee. We do not wish these records taken and photostated and used against our client. We think they are privileged.

Now that is our position here, your Honor. We have no objection to bringing all the Keeshin exhibits that Mr. Freeman saw. We will furnish him with copies if he wants. But we think that the second paragraph should be quashed because it is immaterial to the question of public injury.

By Mr. Freeman: Your Honor, this statement, I am most reluctant to say, is so full of inaccuracies and falsehoods that it reflects upon the professional character of this man. But in any event, let me straighten out
761 a few things.

With respect to this second paragraph, the financial records were made available to us pursuant to your order, not Judge Sullivan's. It was pursuant to your order.

Mr. Meserow has no excuse for forgetting that because he specifically asked me to furnish him with a copy of your order when we asked that our accountant go in to see the books and records.

762 Now the only reason we have served this subpoena —well, there are two reasons.

With respect to the exhibits themselves, we wanted the exhibits here so that we could identify them in the event we went into those subjects. We recognize that if your Honor continues to rule as you have, the only thing we will do is identify them and offer them, but they will be

rejected, or maybe some of them will not. Some of them will bear upon the issue of public injury.

By the Court: You are talking now about the 59 exhibits?

By Mr. Freeman: Yes, they are 59.

By the Court: No objection to that.

By Mr. Freeman: No.

The second issue, as Mr. Meserow mentioned, we have taken an audit and sent a man to look over certain books and records. They have denied us certain information. They have denied us the statistical information that I do want also to come here. But primarily we ask that these books be brought here so that we can lay the proper foundation for the summaries that we are going to submit.

Now if Mr. Meserow will stipulate that in the event you are willing to receive financial data—this is the dam-
age issue, and I rather suspect that you will exclude
763 it.

By the Court: That is right.

By Mr. Freeman: But in any event, we will bring forth a witness who will testify that he went to the original records, made certain summaries, and according to all the rules that I have ever known, these summaries can only be offered if the original books and records are available in court, and so we are asking them to be brought here.

If Mr, Meserow at this stage is willing to stipulate that these summaries can be offered without the necessity of having the books here, we will proceed on that basis, recognizing that the issue of damages is one that we are going to have some difficulty establishing before the jury at this stage of the proceedings.

By the Court: May I ask a question now?

By Mr. Freeman: You sure may.

By the Court: I haven't regarded the personalities among the lawyers. I don't pay any attention to that. I mean, it is just too bad that they happen, and we don't indulge in them, but they have no effect on me.

Secondly, I have to rule, to be consistent with my previous rulings during the past five days, that this goes
764 directly to the element of damages and hasn't any bearing on public injury.

I will permit you to make an offer of proof with the summary, the same as though the original records were here, for the protection of your record.

By Mr. Freeman: Can we get that agreement?

By the Court: I am ruling upon it without an agreement. I am letting you make that offer, and I will not permit you to bring in the books and records, so you are protected more than by an agreement.

By Mr. Freeman: Very well.

By the Court: I will quash the second paragraph so that absolves you of any need for it, but I am going a step further and saying on your offer of proof I will permit you to use any summary as though the original books were present.

Now, I will go a step further than that. If there is anything in the books that have not yet been touched upon or have been denied to you, when and if the time comes, I will require counsel to open up those books for the additional information so that you may use a complete summary, if and when it is completed.

By Mr. Freeman: I would like that opportunity now, your Honor.

By the Court: I am not going to do it now because
765 I am ruling that it is not admissible at this time.

By Mr. Freeman: Can we have the benefit of preparation, even though we are not submitting it at

this time? Can we have our accountant make the statistical analysis that I requested and which was rejected?

By the Court: I am quashing the second paragraph so you are fully protected.

By Mr. Meserow: Thank you.

By Mr. Thompson: Of course, as far as the other defendants are concerned, we certainly object to making offers of proof which are clearly outside of any possible relation to the question before the Court. This matter of damages is obviously something that is separable.

By the Court: I will cross that when he makes the offer. I realize, Judge Thompson, I would like to say it again and give you my clear thinking—I may not be clear. I don't profess to have an exclusive on knowledge. I am just trying to go along the best I know how.

My judgment is, in all fairness, and I am trying to be very fair, the least I can afford the plaintiff is an opportunity, if they are making a record, without injury to the defendants or any of them, is to make an offer of proof.

As I read the cases it is discretionary with the
766 Court. I have spent a little more time in the library,
and I have got some more cases on it. It is entirely discretionary with the Court. I think I have the right to exclude it, in my discretion, but where it is openly stated to me in open court that they want to make a complete record, and there is a very clear cut division of opinion here, and we understand each other now, as to where public injury begins and where it stops. I do not want to be too technical about it. I would rather have the Court of Appeals, if they are going to review it, say the Judge was not arbitrary.

All right, let's proceed.

By Mr. Thompson: Well, of course, as far as damages are concerned, that is obviously something you can separate. There is no question about it.

By the Court: I am inclined to agree on that issue except for one thing. If there is any tendency or any suggestion to me that it may lead to something else, I cannot prejudge it.

All right.

(Whereupon, the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen.

767 Is everybody happy?

All right. Proceed.

By Mr. Freeman: I have some further questions of Mr. Nelson.

768 By the Court: I would like to recess at 12:15 until 2:15, so you can arrange your time. I have a public meeting where I have to be at 12:30 not too far from here. It may take until a few minutes after 2:00. You can figure on your time up to 12:15 or 12:20 and then up to 2:15. You can adjust your appetites accordingly, ladies and gentlemen of the jury.

STANLEY F. G. NELSON, called as an adverse witness by the Plaintiff herein, being previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (continued) by Mr. Freeman.

Q. Mr. Nelson, you will recall at our last session we were discussing the question of the reason, the primary reason why this committee of six, the negotiating committee, was established; you recall that testimony?

A. Yes.

Q. I ask you whether or not the committee prepared a progress report as a result of their January 5, 1955, meeting, and the progress report was dated January 5,

1955, summarizing the negotiations that the committee had conducted to that time?

A. That is right.

769 Q. Did you participate in the preparation of that progress report?

A. I did.

Q. Was it transmitted to the Chicago Terminal Lines as an indication of the negotiating committee's work to that time?

A. I believe it was transmitted to Chairman Padrick, wasn't it, rather than to the individual lines?

By Mr. Freeman: Let me identify this, and then I think it will clarify your recollection. I would like to mark, for the purpose of identification, this seven-page compilation of material covered by a transmittal letter of January 11, 1955, and coded A-72, second series, to A-77-A, second series, as Plaintiff's Exhibit No. 33.

(Thereupon said document was marked Plaintiff's Exhibit 33 for identification.)

By Mr. Freeman:

Q. I show you Plaintiff's Exhibit No. 33, Mr. Nelson, and I ask you whether or not Pages 2 to 3 of that exhibit is the progress report made by the committee and signed by the six members of the negotiating committee or

770 the six railroads of the negotiating committee?

A. That is right.

Q. And is the first letter a transmittal from Chairman Padrick to all of the 21 terminal lines?

A. It is.

Q. And then Pages 4 and 5 have to do with a report from Mr. Dean, who was the baggage, general baggage agent of the New York Central dealing with a special baggage problem, was it not?

By Mr. Keating: Objection, your Honor. Specifically he was the general baggage agent of the LaSalle Street Station.

By Mr. Freeman: You are right, and I am sorry.

By Mr. Freeman:

Q. Mr. Dean was general baggage agent of the LaSalle Street Station, was he not?

A. That is right.

Q. And these pages are a report from him with respect to a baggage problem the committee was considering?

A. That is right.

Q. And the last few pages have to do with a memorandum of July 21, 1954, prepared by the committee, indicating the size of the transfer job and transmitted
771 to prospective bidders on the contract, is that correct, Mr. Nelson?

A. That is.

Q. And were these papers prepared in the course of the committee's deliberation and transmitted out to the Chicago Terminal Lines for their information and to demonstrate the progress that had been made to date?

A. That is right. Mr. Dean's letter, that was his own.

Q. Mr. Dean's letter was not the committee's work, but it was transmitted to the terminal lines for their information?

A. That is right.

By Mr. Freeman: I offer in evidence as Plaintiff's Exhibit No. 33 the document that has previously been marked as such.

By Mr. Meserow: I object on the grounds it is not binding on my clients, your Honor. It is hearsay.

By the Court: I think we are getting into the terminal activity. I don't know whether it is binding on anybody except the members of the terminal.

772 By Mr. Freeman: Your Honor, Mr. Nelson is a member of the negotiating committee.

By the Court: I want to hear from Judge Thompson on that situation if he has any objection to it.

By Mr. Thompson: We have no objection on behalf of the railroad defendants or the railroad presidents.

By the Court: All right; I believe it can be admitted as against all of them, because if it deals with the Keeshin offer and with the Parmelee offer, I think it is properly admissible.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 33.)

By Mr. Freeman:

Q. You will recall, Mr. Nelson, that yesterday you testified that you were very certain that the Keeshin proposal that was being considered by the committee on January 5 had a rate lower than the $1.20 rate for the first year that Keeshin subsequently proposed because of the question of loading and unloading trailers, is that right?

773 A. I have subsequently found I was in error in reviewing the file. His original proposal was $1.20.

774 Q. Isn't it true, Mr. Nelson, that Keeshin's original proposal which was rejected by the committee on January 5, 1955 was the same proposal which was accepted by the committee on June 3, 1955?

By Mr. Thompson: If the Court please, it requires a lot of patience to tolerate this misconduct of counsel. There is no basis for any such speech to the witness.

By the Court: I will sustain the objection.

By Mr. Thompson: Ask him whether or not the December proposal—He can ask the facts without stating all of these things in speeches.

By the Court: That is right. I sustain the objection because, in the first place, if the offers were in writing, they are the best evidence, and in the second place it is

an overall analysis and conclusion, as to were they the same, and if he says yes or no, he has to explain every difference in every detail.

By Mr. Freeman: I want to ask him if they were the same.

775 By Mr. Freeman:

Q. Were the proposals by Keeshin—was the Keeshin proposal the same on December 15, 1954 and as modified in January of 1955, straight through the negotiations?

By Mr. Thompson: Now, if the Court please, the proposals are all in writing, the December 15 proposal, the January 15 modification of the proposal, the April 6 amplification of the proposal, all three of them are in writing, and it can be readily compared.

By the Court: The objection will be sustained for one more reason besides that. The witness already testified that he had—that he was displeased with some features of it, and he discussed it and proposed the changes.

Am I correct in that?

By the Witness: You are right, sir.

By the Court: Sustained.

By Mr. Freeman: We will make an offer of proof after we get through with Mr. Nelson pursuant to our truncated procedure, but I will attempt to prove it through this

776 document.

By Mr. Freeman:

Q. Mr. Nelson, did the committee, including you as a member of the committee, summarize the Keeshin proposal as it was before the committee on January 5, 1955, as follows:

"Keeshin: This company has submitted a proposal for the handling of both passengers and checked baggage which is slightly reduced from the price which we are paying or $1.20 with the price of the coupon

tied into an escalator clause similar to that which we have with Parmelee today. The proposal contains a provision whereby station forces would load and unload trailers which would be hauled between the stations by tractors, and the proposal indicates more transfer trips than are presently being made. We would call your particular attention to the fact that this would be an increase in the work of the station forces. The Keeshin plan outlines purchase of new station wagon-type equipment to be built by a Detroit
777 organization, and the hand luggage would be placed on top of the vehicle. Also, the vehicle is radio equipped and air conditioned, the radio facilitating dispatch of cars between stations."

Do you recall that summary of the Keeshin proposal?

A. That is the progress report to date. It was still in the state of negotiation. There was nothing definite.

Q. I want to ask you, Mr. Nelson, whether you recall any change in the Keeshin proposal prior to June 3, 1955, as against this summarization?

By Mr. Thompson: If the Court please, again we have the documents before him, the April 6 letter which takes care of it.

By the Court: Read the question.

(Whereupon the record was read as above recorded.)

By the Court: He may answer.

By the Witness:

A. In so far as checked baggage is concerned, sometime during the early part of April we did receive a letter from Mr. Keeshin modifying his original proposal, in that his proposal would not necessarily mean that the railroads would—that the personnel at the station would load and unload their baggage.

778 By Mr. Freeman:

Q. But were you still in doubt as to whether that

issue had been determined at the May 19 meeting?

A. That letter sufficed to us to prove he was willing to take care of the loading and unloading of his baggage in the April letter.

Q. Did he agree to take care of the loading and unloading of the baggage after June 3 of 1955?

A. Yes, definitely.

Q. He definitely did?

A. All the way through after his April letter, in which his letter I make mention to in April definitely states he will load and unload his baggage.

Q. Mr. Nelson, you are now very positive that it was definitely determined as a consequence of Keeshin's April 6 letter that Keeshin's employees would load and unload trailers and not the railroad employees?

A. Insofar as the Grand Central Station is concerned, which I represented, yes.

Q. They why did you write this letter that has been identified as Plaintiff's Exhibit No. 33, or rather No. 32, in which you say:

"I feel that Keeshin is hedging from the original
779 arrangement of his own people loading and unloading trailers."

A. Because as I just previously stated, it was definite in my mind that he was going to load and unload at the Grand Central Station.

Q. Was the issue determined as of June 23 when you wrote this letter, or didn't you know?

A. Well, as far as I was concerned, the Grand Central Station, he was loading and unloading baggage there, and his letter of April 6th or the early part of April was sufficient to my mind that that was going to happen, and that did happen.

Q. Mr. Nelson, did Mr. Keeshin in his first proposal of a contract some time in July of 1955 propose to the railroads that they load and unload the baggage?

A. He had made that proposal, but it was not acceptable to me.

Q. And it was not acceptable to the other railroads, was it, either?

A. I don't know. I am talking about the Grand Central.

By Mr. Keating: Objection to that, about the other railroads.

By the Court: Sustained.

By Mr. Freeman:

Q. Did Mr. Keeshin in July of 1955 over a month
780 after he had been selected propose that the railroad employees load and unload these trailers?

A. I do not recall that.

Q. You don't know?

A. No, I don't.

Q. I thought you had answered it yes before.

A. No; I don't recall that.

By Mr. Keating: Your Honor, I object to that. It is for the Jury to remember what Mr. Nelson answered, not Mr. Freeman's comments.

By Mr. Freeman: I assume the jury will remember.

By Mr. Keating: Well, may I have a ruling?

By the Court: You assume the jury will pass upon it, and that is correct. I don't comment on the evidence.

By Mr. Freeman:

Q. You will also recall, Mr. Nelson, that we discussed the question of whether or not there was any dissatisfaction with the Parmelee service which caused the committee to be organized and negotiate; you recall that conversation yesterday?

781 A. Yes, sir.

Q. Is it true that in describing the size of the

job that had to be done to prospective contractors that the committee prepared a little summarization which included the following paragraph, and I read it from the first page of this summary as follows:

"We would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company, and they feel that the services of each has contributed to the success of the other. Notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary, and because the greater portion of the transfer fee paid to the Parmelee Transportation Company is absorbed by the outbound railroad. It is thereupon necessary to canvass the companies capable of handling such a transfer of passengers and baggage and whose reputations and vehicle equipment would indicate the ability to satisfactorily perform
782 the service and at a fee attractive to the rail carriers who, as stated above, absorb the charges accruing to the Chicago transfer."

First, did that express your point of view at that time?

By Mr. Thompson: If the Court please, I assume this was a question addressed to the witness. Notwithstanding it was read with the arm waving and histrionics that are going along with all of this.

By Mr. Freeman: This a failing I have.

By Mr. Thompson: I should say it is a failing, and you ought to correct it.

By Mr. Freeman: I won't.

By Mr. Thompson: I am sure that is true. I object to the question being put in that fashion by delivering a Fourth of July speech and then saying, "Does that accord with your recollection"; and the document is in evidence

and speaks for itself, and we need no such time wasting speech.

783 By the Court: I received it in evidence on a theory that it is a genuine original document in the ordinary course of dealings by the group.

By Mr. Freeman: I could read this document to the jury, but I want to read it to the jury and find out from this witness whether it represented his view currently at that time.

By the Court: I don't think it makes any difference whether it represents his view or not. I let it in as proper and admissible. It is everybody's view now.

By Mr. Freeman: All right. I withdraw the question and you don't have to rule on it. But I do—

By Mr. McConnell: Your Honor, he has a right to read. He didn't interpolate anything in that question. He read from evidence and asked this witness whether or not it accorded with his view.

By the Court: He has a right to read the entire document to the jury as everybody's view because it is in evidence.

784 By Mr. McConnell: Certainly. There is nothing in that reading, and if Judge Thompson doesn't like the way he reads it, that is too bad.

By the Court: I don't mind the intonations. I am passing upon the substance of it.

By Mr. Freeman: Let me see if I can advance this issue a little further.

I would like to have marked for the purpose of identification as Plaintiff's Exhibit 34 this one-page memorandum dated January 7, 1955, coded as B&O-70.

(Thereupon said document was marked Plaintiff's Exhibit No. 34 for identification.)

By Mr. Freeman:

Q. Are you familiar with this memorandum signed by R. E. Coleman and addressed to Mr. Whittington in Baltimore?

By the Court: Is this in evidence, Mr. Freeman?

By Mr. Freeman: No, I am identifying it.

By the Witness:

785 A. That is right.

By Mr. Freeman:

Q. Did you assist in the preparation of that memorandum?

A. I did.

Q. Was it prepared in the ordinary course of your railroad functions?

A. That is right.

Q. And was it sent to Mr. Whittington as a memorandum of the points of view of your department here in Chicago?

A. That is right.

Q. Was it also sent on to the files in the regular course?

A. That is right.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 34.

By the Court: This is a personal memo from him to his superior?

By Mr. Freeman: No, it is a memorandum from his department to his superior in Baltimore.

By the Court: He participated in it?

By Mr. Freeman: Yes.

By Mr. Thompson: Well, it is a letter of trans-

786 mittal from his superior in Chicago to their superior in Baltimore, transmitting this document that has just been admitted in evidence.

By the Court: It may be received against his company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 34.)

By Mr. Freeman:

Q. Does this memorandum represent your views as of January 7, 1955?

By Mr. Thompson: It is nothing but a letter of transmittal. There are no views in it.

By Mr. McConnell: I object to counsel's statement of the contents of the document.

By the Court: I will let him answer.

By the Witness:

A. Yes, sir.

By Mr Freeman: Then I would read to the jury this remark. This is to Mr. J. F. Whittington, January 7, 1955, Chicago, Illinois:

"As previously informed you, the Chicago Terminal
787 Lines early last year appointed a sub-committee to make a survey of the Chicago transfer situation, particularly from an economic rather than a service standpoint, as the latter has been satisfactory in its handling by the Parmelee Transportation Company.

"For your perusal I am enclosing copy of the report of this committee under the chairmanship of Sidney N. Bone, passenger traffic manager of The New York Central Railroad, to Chairman E. B. Padrick.

"This report is just about as good a resume of the actions that have taken place as we could report separately. In addition, we are enclosing copies of the proposals referred to in Mr. Bone's report covering the F. Landon Cartage Company, J. L. Keeshin, and R. E. Dean, general baggage and mail supervisor, La Salle Street Station, Chicago.

"Should any of the other contractors subsequently submit proposals, even though the deadline is long past, we will, of course, see that you are kept fully informed."

Signed by R. E. Coleman and a copy went to Mr. Eichner.

788 By Mr. Freeman:

Q. Who was Mr. Eichner?

A. Manager, mail, baggage and express in Baltimore, of our company.

By Mr. Freeman: I would like to have marked for the purpose of identification as Plaintiff's Exhibit 35, this original letter addressed to Mr. Scheeder of the Parmelee Transportation Company, under date of September 8, 1954.

(Thereupon the said document was marked Plaintiff's Exhibit 35, for identification.)

By Mr. Freeman:

Q. I show you this letter which has been identified as Plaintiff's Exhibit 35, Mr. Nelson, and I ask you whether this letter was sent from your department to Mr. Scheeder?

A. It was.

Q. Did you participate in the preparation of that letter?

A. I did not.

Q. Was that letter prepared by your superior, Mr. Coleman?

789 A. That is right.

Q. Do you recognize his signature?

A. I do.

Q. Is it his signature?

A. It is.

Q. And was this letter prepared in the regular course

of the Baltimore and Ohio's functions and of your department's functions?

By Mr. Owens: Objection. It wasn't prepared by him, your Honor. It was prepared by someone else. He has no knowledge of this thing.

By Mr. Freeman: I can bring Mr. Coleman in, but I think—

By the Court: If he knows, he may answer.

By the Witness:

A. It was.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 35.

By Mr. Meserow: May I see that, please?

By Mr. Freeman: No one has seen this.

By Mr. Meserow: Your Honor, I am going to object on behalf of Railroad Transfer Service.

790 This is dated September 1954. We weren't in existence until a year later.

Secondly, as to defendant Keeshin, it is not binding on Mr. Keeshin at all. I don't think it has anything to do with this case. It is dated September 8, 1954, and is beyond any realm of the public injury or the time involved in the issues of this case.

By Mr. Freeman: You will recall, your Honor, that this witness testified that he received complaints against Parmelee. I am trying to demonstrate the facts with respect to that situation.

By the Court: It may be received only for—

By Mr. Thompson: If the Court please, may I state an objection?

By the Court: Oh, surely. I am sorry, Judge Thompson.

By Mr. Thompson: I am sorry to interrupt your Honor.

By the Court: Oh, no. I thought that was it. I heard

the objection and I didn't hear any more. I am
791 sorry.

By Mr. Thompson: We object to this as an expression of an opinion in an isolated incident, of course, which doesn't express any more than if you had a letter expressing criticism in an isolated incident. One incident proves nothing pro or con, and so we think this has no probative value; that it is simply cluttering up the record.

It is an expression of opinion by an individual and is not binding on anybody that is a defendant here except possibly the B&O, and I don't know how it can be binding on them except as an individual's opinion of what happened on one day in one transaction.

By the Court: I will let it go in as against the Baltimore and Ohio, only on the basis that it might have some tendency to impeach the witness, that is all.

By Mr. Thompson: Of course—

By the Court: I agree with the general conclusion that pertains to only one transaction on one day.

792 By Mr. Thompson: And of course, I should think this opens the door now to a whole truckload of letters criticizing the service on different days of the Parmelee—

By Mr. Freeman: Let's see that.

By Mr. Thompson: (Continuing) —of the Parmelee institution, and also a truckload of letters pro and con on the Keeshin service. There is no institution that operates day after day that somebody doesn't either find some excuse for complimenting them or criticizing.

It seems to me we are getting into a collateral issue here which, even if relevant and material, is opening the door to a frightful waste of time and proves nothing pro or con.

By Mr. Freeman: It has to do with this witness' testimony.

By the Court: I think the witness covered this pretty well yesterday. I will let my ruling stand.

By Mr. Freeman: This is addressed to Mr. W. A.
793 Scheeder, vice president, Parmelee Transportation Co., 300 North Des Plaines Street, Chicago, Illinois. This letter is dated September 8, 1954:

"Dear Bill:

"Your organization handled a big job in a most effective manner Sunday afternoon, September 5.

"You transferred almost 400 service men including 300 with duffle bags from our station to the North Shore and Union Stations, dispatching them all within thirty minutes.

"Real teamwork was indicated including the advance planning which obviously was necessary, an all-out effort by your agents Barkey and Kavanaugh on duty here, and complete cooperation on the part of every driver involved.

"My associates have called this outstanding performance to my attention and we want you to know that the efforts of all concerned in your organization
794 are greatly appreciated.

"Yours truly,

"R. E. Coleman, Passenger Traffic Manager, Baltimore and Ohio Railroad Company."

795 By Mr. Freeman:

Q. Now, Mr. Nelson, you also attended a meeting of the Chicago Terminal Lines on June 13, did you not?

A. I did.

By Mr. Freeman: I ask to have marked for the purpose of identification as Plaintiff's Exhibit 36, this two-page memorandum dated June 13, 1955, and coded as

B&O-13 and -14, previously identified as Nelson Exhibit 20 in his deposition.

(Thereupon said document was marked Plaintiff's Exhibit No. 36 for identification.)

By Mr. Freeman:

Q. Is Plaintiff's Exhibit 36 for identification a memorandum prepared by you, Mr. Nelson?

A. Yes, sir.

Q. And was this prepared immediately after your meeting on June 13, 1955 with the Chicago Terminal Lines?

A. It was prepared after the meeting.

Q. Does it truly and correctly set forth your recollections of what happened or the major issues of what occurred at that meeting?

A. Apparently it does.

796 Q. And was it prepared in the regular course of your functions for the Baltimore & Ohio Railroad?

A. That is right.

Q. And was it transmitted to Baltimore for information to your home office?

A. That I do not recall because there is nothing here. It is just a memorandum. Whether there was a subsequent letter of transmittal or not, I don't know.

Q. Was it regularly filed in your office?

A. It was filed in our files.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit 36.

By Mr. Thompson: If the Court please, this is a memorandum which purports to report on certain things that happened at this meeting. Among them is a third paragraph in the memorandum which is a reporting of hearsay. Of course, the witness himself couldn't testify to

this subject because it is a reporting of hearsay, hearsay on hearsay here, and that being true, the document containing that extraneous matter is not admissible in evidence.

The rule which permits records of a corporation to
797 be received if made in the regular course of business, and if it is the regular course of business to make the record, dispenses only with the requirement that you do not have to produce everybody back of it. It is an amplification of the old shop rule, and it does not permit hearsay through a document any more than it permits hearsay from a witness on the witness stand.

By the Court: That is a correct statement of the law. Which paragraph did you say?

By Mr. Thompson: The third paragraph.

By Mr. Freeman: This witness had prepared a memorandum of what transpired at that meeting, and that is all we are attempting to establish, and whatever transpired was an event.

By Mr. Thompson: Mr. Alms is available and Mr. Alms can testify directly. This witness can't testify to hearsay and have it binding on anybody.

By Mr. Keating: Mr. Alms is not a party to this suit nor is his company nor is the other individual named in there.

One of the requirements of the shop rule is that
798 the writer of the record must be reporting something that he has a duty to report in the furtherance of his company's business. I think on the face of it, paragraph 3 shows that that is not the situation here.

By Mr. Freeman: Mr. Keating has given you the reason why the memorandum must be accepted. Mr. Nelson was reporting a fact which was in furtherance of the B&O's business.

By Mr. Keating: He is reporting a fact of some third person, your Honor.

By the Court: Objection will be sustained, unless you delete that one paragraph.

By Mr. Freeman: Oh, I wouldn't delete the one paragraph. I would like an opportunity to be heard on this. Of course, if your Honor has already ruled—

By the Court: I will be very happy to hear you on it.

By Mr. Freeman: Well, this is a memorandum—

By Mr. Keating: Outside the presence of the jury, Mr. Freeman?

By Mr. Freeman: I can't say anything more that
799 will be prejudicial to the jury than you have, and certainly I will restrain my remarks so it won't be prejudicial.

By the Court: Proceed.

By Mr. McConnell: Let me suggest that this is a well recognized exception to the hearsay rule. The Circuit Court and Court of Appeals has squarely ruled on it. I can get the case here as soon as I get to my office.

They have ruled that reports made of what is heard in the ordinary course of business, even though it is hearsay, is admissible under the shop rule exception.

By Mr. Freeman: Yet, and the fact that the report is of an oral declaration doesn't make it hearsay. It is the occurrence of an event. Somebody made a statement, and that is all that is being recorded.

We would like an opportunity, if your Honor will permit us, to supplement this argument, if you will withhold your ruling.

By the Court: I will withhold my judgment until
800 you show me a citation on it.

Secondly, this goes into the conspiracy element, that paragraph, and has nothing to do with the issue of public injury.

By Mr. Thompson: That is right.

801 By Mr. Freeman: I am willing to admit that this goes into the conspiracy issues, and one of the parties named is a co-conspirator, not named as a defendant.

By the Court: On that basis—

By Mr. Freeman: If you are going to exclude it on that basis, I can possibly understand—

By the Court: That is my basis. The other one I could forego because there is nothing too seriously detrimental, either one way or the other, but on the question of hearsay, I think the objection is good, but I am willing to hear a citation on it. But on the question of conspiracy, I definitely rule out that part of it.

By Mr. Freeman: Then let us see if we can clarify the record when we come back this afternoon so that we know the basis of your Honor's ruling.

By Mr. Freeman:

Q. Mr. Nelson, did you have any knowledge during the course of these negotiations of the fact that the Baltimore and Ohio Railroad Company had lost a substantial amount of money in the Keeshin Freight Lines reorganization.

802 By Mr. Thompson: Now, if the Court please—

By the Court: Objection sustained.

By Mr. Thompson: Not only that, but I think it is high time to admonish counsel to observe some of the reasonable rules of the Court.

By the Court: Yet, that is definitely out of line.

By Mr. Freeman: I don't understand why it is out of line, and if you will explain it, I will abide by your judgment—certainly not Mr. Thompson's constant irritation.

By the Court: I will explain it to you in this way. Whatever motivated the Baltimore and Ohio to enter into the Keeshin contract, whether they have or have not lost any money in the Keeshin transaction before, hasn't any

element of admissibility or relevancy to the question of public injury, not at all.

By Mr. Freeman: Your Honor, it is our position
803 that the extent to which an arbitrary reason or arbitrary motivations were pursued by the Baltimore and Ohio Railroad in selecting Keeshin, to that extent we have delved into the problem of public injury even as you have defined it.

By the Court: I will not comment on that. I don't approve of it, and I sustain the objection.

By Mr. Freeman: May I just say one thing further? It does seem to me that every time I ask a question that will hurt the defendants' position, Mr. Thompson immediately gets up and says admonish me, I am being prejudicial. Everything in this case is prejudicial to the defendants.

By the Court: I don't approve of any description of any basis for objections except on a legal basis, and I want the jury to know that.

I told you when I first talked with you that counsel's statements are not evidence, and they certainly ought not to get into personal matters. We are conducting a
804 lawsuit here, and all I am interested in is ruling on the propriety or impropriety of evidence.

I don't want to answer counsel's statements on that because by answering it, I would comment on my own views, and I don't want to comment except on the basis of law.

By Mr. Freeman: I don't either, but I think once a day I have to comment on the multiple insults.

By the Court: I want to say to all counsel, we have been together now for five days. We have reiterated our respective views on all the subjects. We understand them, or we should understand them, and we ought not to admonish each other and we ought not to bark at the Court. We are doing the best we can with the job, and we are going to

try to carry it to a conclusion so that it will be reviewable intelligently, according to my judgment.

By Mr. Freeman: I would like to have marked for
805 the purpose of identification as Plaintiff's Exhibit 37 a certified copy of a petition of the Baltimore and Ohio Railroad for leave to intervene in the matter of Keeshin Freight Lines in reorganization in the Federal Court of this District.

By Mr. Meserow: Your Honor, I object—

By Mr. Thompson: Wait a minute.

(Thereupon the said document was marked Plaintiff's Exhibit 37 for identification.)

By the Court: The Court will sustain the objection for the grounds already ruled on, and it ought not to be repeated.

By Mr. Freeman: I just want this document in the record, and I understand your ruling.

By Mr. McConnell: I am at a loss to understand why the financial stability of this man hasn't an interest to the public. If he can't perform his duties because of his financial difficulties that is certainly relevant.

By the Court: I think we ought to confine our
806 examination to one counsel of one witness so we can follow it. I have ruled on your associate, and if he wants to argue some more, fine.

By Mr. Freeman: I don't like to argue after the Court has ruled.

By Mr. Meserow: May I answer Mr. McConnell?

By the Court: No, you may not. I have answered him.

By Mr. Thompson: That will make it all the worse if you answer him.

By Mr. McConnell: I agree with that statement.

By Mr. Thompson: That is right. Your statement was a falsehood, and you know it.

By Mr. McConnell: It wasn't a falsehood and I don't like the charge. I move to strike it.

By the Court: I will let one man examine a witness and discuss it and approach the Court. I can't argue with two lawyers, and I don't propose to.

807 By Mr. Freeman:

Q. Mr. Nelson, after you inspected the Keeshin equipment, which you said you did on June 2nd, did you have a conference with Mr. Richard E. Coleman, your superior?

A. No, I don't believe we had any particular conference.

Q. Did you have any discussion with him?

A. Well, he left the meeting after inspecting the equipment, and I don't think he came back that day at all.

Q. Did he go and inspect the equipment also?

A. Yes, sir.

Q. Do you know what his views were with respect to the Keeshin proposed equipment?

A. No, I do not recall what his views may have been.

Q. Let me ask your views then.

Were you opposed to putting baggage on the top or roof of the station wagons, as had been proposed by Mr. Keeshin?

By Mr. Thompson: Well, if the Court please, this was never done so I don't know why we should be wasting our time about going into something that never hap-

808 pened any time or in the future.

By Mr. McConnell: I object to counsel getting up here and testifying on these issues. Every time he makes an objection, he gets up and testifies.

By the Court: I will sustain the objection to that form of an objection.

The witness may answer that question, if there was or wasn't.

By Mr. Freeman: Having in mind Mr. Thompson's coaching.

By Mr. Keating: I object to the remark of counsel.

By the Court: It may be stricken.

By Mr. Keating: Thank you.

By the Witness:

A. There were certain objections, but not entirely to handling the baggage on top, and I think I discussed it at the time with Mr. Keeshin or one of his associates there, my ideas, my opinions.

By Mr. Freeman:

Q. Did you also have objections to passengers being carried in the third seat because of the difficulty of getting in and out of the vehicle?

809 A. No strenuous objections. I said it would be advisable not to have it. It would be better if they didn't. As I recall, Mr. Keeshin said he wouldn't have any passenger sitting in that third seat in the station wagon.

Q. Were these station wagons standard pieces of equipment?

A. Apparently so. They looked like standard equipment.

Q. Regular Ford or Mercury station wagons?

A. Apparently so. They looked like it.

Q. Do you know whether or not the station wagons were the same equipment that had been proposed by Mr. Keeshin in his December, 1954 proposal?

A. Well, I would presume so. I didn't see him in December so —

Q. In an attempt to be fair to you, did he propose station wagons in December, 1954?

A. I believe that was in his original proposal.

Q. Did you have any conversations, Mr. Nelson, with other members of your negotiating committee during the course of these negotiations?

A. Not other than at the meetings.

810 Q. Was there any—

A. Because I very seldom contacted them.

Q. You didn't call them on the telephone?

A. No.

Q. Nobody called you on the telephone?

A. No.

Q. Did you feel that there was something brewing in the background of these negotiations?

A. What do you mean by "brewing"?

Q. Were you informed at these committee meetings that there had been intervention by Mr. Cross in the case of several railroad presidents?

By Mr. Meserow: Objection, your Honor.

By Mr. Thompson: Objection.

By the Court: Sustained, and it may be stricken, and he need not answer.

By Mr. Freeman: I will make an offer of proof on that.

By Mr. Freeman:

Q. Were you of the opinion, Mr. Nelson, at the time of these negotiations in May and June that there was a matter of policy involved that required a decision from your principal officers in Baltimore?

A. Not a question of policy involved. We have no

811 authority here in Chicago to make policy. My duty was merely to inform them as to what was occurring at these various negotiating meetings.

Q. You had no authority to make the decision for or against one of these contractors?

A. That is correct.

Q. The decision had to be made in Baltimore?

A. That is correct.

Q. Would that decision have to be made by Mr. Simpson, the president of your company?

A. I wouldn't know.

Q. Did you regard the decision as one of a matter of policy?

By Mr. Thompson: I object to that, if the Court please, as calling for an opinion.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Was there something in making this decision other than a comparison of the proposals of Keeshin and Parmelee?

A. I couldn't answer for the gentlemen in Baltimore who would make the policy.

Q. As far as you were concerned, I am asking.

A. I wouldn't know.

812 Q. You don't know?

A. No, I don't know.

Q. Did Mr. Whittington ever advise you that there was a question of company policy involved here?

A. Definitely not.

Q. Did Mr. Whittington ever have any conversations with you on the transfer matter?

A. I doubt it, because of my memorandums being complete; I assume they were complete.

Q. How long, Mr. Nelson, were you a member of this Chicago Terminal Lines as a representative of the Baltimore and Ohio Railroad?

A. Since January 1, 1949.

Q. And from January 1, 1949, through 1955 you attended all or most of the meetings, did you?

A. That is right.

Q. And you participated in all or most of the negotiations on the Chicago transfer situation?

A. That is correct.

Q. Were there any meetings that were held in 1954 with contractors on which you did not prepare memoranda and transmit them to Baltimore?

A. No, sir.

Q. You transmitted a memorandum to Baltimore, for example, when you had a meeting on September 15, 1954?

813

A. Well, the files would show whether I did or not. It was usually my policy, if there was anything of any importance, to prepare a memorandum and forward it on to our Baltimore office.

814 Q. I will bring the file to you, or you may look at your own file, and you advise us if there is any memorandum that you sent to Baltimore covering any of the negotiating meetings in 1954.

By Mr. Thompson: If the Court please, we have been all through this in the pre-trial deposition taking. We have examined the file. Mr. Freeman has had them all furnished to him, and he knows there are none there, and why waste the time?

If there is one, let's have it produced.

By Mr. Freeman:

Q. Do you know of any memorandum that you prepared, Mr. Nelson, that was transmitted to Baltimore covering any of the negotiating sessions in 1954?

A. Well, the files would have to speak for themselves. There would either be a penciled memorandum, which I did not have typed up into a permanent memorandum, or there would be a typed memorandum. If neither one appears in those files, I made no memorandum.

Q. How many negotiating sessions did you have in 1954; can you remember?

A. I don't recall.

815 Q. Were there as many as ten?

A. I don't have any idea how many we had.

Q. Were there more than two?

By Mr. Thompson: The witness has answered. There is no use speculating and guessing any further.

By Mr. Freeman: I think that is right. I have nothing further on Mr. Nelson. Thank you.

By the Court: All right; do you want a little recess?

By Mr. Thompson: No.

By the Court: I thought maybe you wanted to talk to counsel.

By Mr. Thompson: No.

By the Court: All right, proceed.

Cross Examination by Mr. Thompson.

Q. Mr. Nelson, I think you just stated that you were active in these negotiating committee meetings from January 1, 1949 through the 1955 negotiations?

A. That is right, on the Chicago Terminal Lines' committee and subsequently the sub-committee.

816 Q. What was the event or occurrence in 1954 in January that stimulated the appointment of this committee of railroad terminal stations?

A. Well, once again we had been approached for an increase in our coupon rate, which was something that we went through every year preceding Parmelee's and the railroads' expiration of contract on June 30th, and this time it was to be $1.25, as I recall, if they were to continue in business.

Q. Was there a demand for $1.25 or a threat of discontinuance of the service?

By Mr. Freeman: I object to that characterization.

By the Court: Read the question, please.

(Thereupon the record was read as above recorded.)

By the Court: He may answer.

By the Witness:

A. Well, if you consider the fact, as I recall it, that he said he needed $1.25 to continue in business as being a threat of discontinuance — I wouldn't know what he had in mind.

By Mr. Thompson:

Q. Did the committee have presented to it prior
817 to this time a request for an increase in the coupon charge, that is immediately prior, a year or two prior, I mean?

A. Well, each year practically we had Parmelee people approach us stating that they required an increase in the coupon rate previous to their negotiating with their union people.

Q. Do you recall what the coupon rate was in the period preceding January 1, 1955, or rather, 1954, at the time the demand for $1.25 was made? What was the rate then?

A. $1.05.

Q. Do you recall what year that $1.05 rate was fixed?

A. I think it was in 1952.

Q. Prior to that it had been what?

A. $1.00.

Q. And when was the preceding increase in coupon rate?

A. Sometime in the late '40's, I think 1948 maybe it was, that it was 85 cents.

Q. From 85 cents to a dollar, is that it?

A. Yes.

Q. I assume you did not participate in the negotiations which resulted in this increase from 85 cents to $1.00?

A. I did not.

818 Who was the representative of the Baltimore and Ohio on the terminal lines group prior to your taking over?

A. My predecessor was Mr. Slottman. He is deceased now, retired and deceased.

Q. What was the situation with respect to whether the labor situation was stable or unstable with the Parmelee group?

By Mr. Freeman: I object to that characterization. I think this is asking this witness too much. He is not a labor expert, nor does he know about the labor negotiations.

By the Court: You mean as far as negotiations, Judge Thompson?

By Mr. Thompson: I mean as far as the actual report to the terminal lines each year.

By Mr. Freeman: He hasn't asked that question.

By Mr. Thompson:

Q. Was it reported to the terminal lines by the Parmelee people preceding June 30th, each year as to their dealings with their labor people on their wage rate?

819 By Mr. Freeman: I object. The best evidence would be the reports. If there were any reports, let's produce them.

By the Court: Overruled. The question is if he knows.

By the Witness:

A. Well, each year as they approached us for an increase they stated that they would have to have some kind of an idea what the railroads would do in connection with their proposal so that they could negotiate their union contract, which evidently was on a year-to-year basis.

By Mr. Freeman: I move the answer be stricken. He doesn't know. He is just speculating.

By the Court: The last part may be stricken where he said, "which evidently was on a year-to-year basis".

By Mr. Thompson:

Q. Was this matter of labor negotiations reported to the lines made every year prior to June 30th?

By Mr. Freeman: I object. If there are reports, let's have them. We have no objection to producing them if they want them. However, I know of none.

820 By the Court: Overruled.

By the Witness:

A. Well, each year the Parmelee Company representative, whoever it might be, would state that they were negotiating with their people.

By Mr. Thompson:

Q. Was there any period of time when there was a tentative arrangement made to handle your transfer business if there was was a strike resulting in Parmelee?

A. Well, there is one instance in the late forties which didn't come about, and then again in the early fifties we had an actual strike which occurred in April and wasn't terminated, as I recall it, until some time in the middle of December.

Q. That is in 1950?

A. 1950, yes.

Q. And preceding that were there matters brought before the Terminal Lines group that there was a possibility of a strike and tentative arrangements made to handle your traffic?

A. I think that was in 1946 or 1947. It was previous to my being in this position, but I recall the correspondence in the office.

Q. Did it happen also in 1948 and 1949 after you 821 did get on the group committee, or do you remember?

A. No, just in 1950 when the actual strike took place, as I recall.

Q. In 1954 when this request was made for $1.25, had you sat with the committee that talked with Mr. Markin on the Parmelee Company in December and heard his oral request for this increase of $1.25?

A. No, I hadn't. It is possible my associate did, Mr. Coleman. I didn't attend that.

Q. Did you receive a written communication in January, 1954 making this request or demand?

A. I believe the association did, the Western Passenger Association did, or the passenger association of the Chicago Terminal Lines.

By Mr. Freeman: I move the answer be stricken. The question was did he, and the rest is speculation.

By the Court: The rest may be stricken. He is talking about a written document, and it should be produced.

822 By Mr. Thompson:

Q. Mr. Nelson, while we are waiting for this document, was it the practice of some agency to communicate to the Terminal Lines these matters of general interest to them?

A. Yes, through Chairman Padrick who was chairman of the Chicago Terminal Lines' committee.

Q. Mr. Padrick was an officer of what corporation, or do you know, or association?

A. Chairman of the Western Passenger, Transcontinental Passenger Association.

Q. And that was his employment, wasn't it?

A. That is right.

Q. Who was chairman of the corresponding group for the eastern group of railroads?

A. Well, there was a chairman of the Trunk Lines Central Passenger Committee in New York, Mr. Winkler, although I don't think Mr. Winkler was in at these early stages.

Q. This morning there was shown to you Plaintiff's Exhibit No. 33, and it was said in the question, "Is this a letter signed by Mr. Padrick?"

That is the letter of January 11, 1955, transmitting information respecting that January meeting. Is it

823 signed by someone else other than Mr. Padrick?

A. Yes; Mr. A. J. Winkler who I stated was chairman of the Trunk Lines Central Passenger Committee in New York.

By Mr. Freeman: Are you suggesting, Mr. Thompson, it wasn't signed by Mr. Padrick?

By Mr. Thompson: No, certainly not.

By Mr. Thompson:

Q. So Mr. Winkler and Mr. Padrick, both their names appear on this?

A. That is right.

Q. And that is transmitting a communication to personnel of railroads above that belong to both groups, the Winkler group and the Padrick group?

A. That is right.

Q. This Terminal Lines, I think you may have tried to describe it yesterday, and it is a little difficult to describe, but the group called the Chicago Terminal Lines, what is it composed of?

A. It is not an official or formal organization. It is just a representative from each of the railroads who meet when we have common mutual problems that we discuss. It is not a formal organization.

824 Q. How are the meetings usually called if someone has a problem they want discussed by all the lines?

A. Well, they usually write to Mr. Padrick, and if he feels the one subject is sufficient in importance he will call a meeting or hold it over until he gets a number of subjects and then call a meeting of the Chicago Terminal Lines.

Q. He has his office where?

A. In the Union Station.

Q. And Mr. Winkler, who represents the other railroads, if he still continues in the office, his office is in New York, is it?

A. That is right.

Q. Was this just a matter of convenience that Mr. Padrick was the clearing house for the calling of these meetings?

A. That is right.

Q. It was no official organization—he wasn't elected as an officer?

A. No, sir; I say it is no formal organization.

Q. All right.

I direct your attention to a document, which I will have marked as Defendants' Exhibit No. 5, for identification.

825 (Thereupon said document was marked Defendants' Exhibit No. 5 for identification.)

By Mr. Thompson: I might say to counsel and to the Court the separate document to which I now want to refer is in this, and there is no use in having it in here two or three times.

826 By Mr. Thompson:

Q. I call your attention to this document so marked.

By Mr. Freeman: What is the date of it?

By Mr. Thompson: This is the Chicago Terminal Lines minutes of April 7, 1954, which incorporates the preceding things we are going to talk about. It is coded as A, New Series, 94 and on out for quite a number. It runs clear through to No. 127.

By Mr. Thompson:

Q. Is that a document which was transmitted to the participating lines of the Chicago Terminal Lines group that reports on the meeting or the minutes of a meeting of April 15 and April 16, 1954?

A. That is correct.

Q. Directing your attention to a document included in those minutes, which purports to be a letter addressed to Mr. E. B. Padrick, and which is signed Parmelee Transportation Company, do you recall that letter being incorporated in the minutes that were transmitted to you?

By Mr. Freeman: I object. Mr. Thompson is assuming these minutes were transmitted to him, and I don't
827 understand the witness has so testified.

By Mr. Thompson: I thought I asked him a mo-

ment ago. I am sorry if I didn't.

By Mr. Thompson:

Q. These minutes were transmitted to you and all the other representatives, were they not?

A. Yes, sir. Insofar as our office is concerned, Mr. Coleman's name appears as being addressed.

Q. Was this letter—does it come back to your mind that that letter was incorporated and was considered at a meeting of the terminal lines?

A. I would say it was attached.

Q. Do you remember this letter, which is the one I asked you about a moment ago, from the Parmelee Transportation Company asking for this $1.25 rate for the period retroactive to January 1, 1954?

A. It was.

Q. Did your subcommittee which had been appointed early in January, that is the subcommittee of the six principal lines, using the six principal stations in Chicago, where you represented the B&O, did that committee discuss with Mr. Parmelee, I mean Mr. Markin or his representatives of the transportation company, these ques-
828 tions that were presented by this letter of January, 1954?

A. I don't believe the subcommittee directly discussed this with Mr. Markin. It was possibly a discussion in the meeting of the Chicago Terminal Lines.

Q. All right. Do you recall the discussions in the meetings of the Chicago Terminal Lines?

A. Well, I don't recall anything specific at this late date, but I think the documents speak for themselves, and there would undoubtedly be discussions among the various members of the Chicago Terminal Lines attending that meeting.

Q. Well, the request was for a $1.25 rate. What discussions occurred between representatives of the lines, any

of them that you heard, and representatives of the Parmelee Transportation Company respecting that request for a $1.25 rate?

By Mr. Freeman: He has already answered that question, that he doesn't know and he can't recall.

By the Court: I think he has. He said he couldn't recall, that it undoubtedly was.

By Mr. Freeman: He doesn't know.

829 By the Court: That he doesn't remember.

By Mr. Thompson:

Q. Well, do you remember the discussions that went back and forth as to what the final settlement was, if any?

A. I believe at that time, if my memory serves me right, we said we would have to check into this further, because, of course, there was no carrier that was in the position or even willing to agree to a $1.25 rate.

830 By Mr. Freeman: I object and move it be stricken. It was prefaced by "I believe," and I think the jury is entitled to know the facts and not have speculation.

By the Court: I will sustain the objection.

By Mr. Thompson:

Q. What was said by somebody there that was in your presence respecting this request?

By Mr. Freeman: He has already said he doesn't know, Mr. Thompson. I don't think this line should be pursued, your Honor. May I object to any further questions?

By the Court: Yes, you may object, and I sustain the objection.

Was there a conversation had in your presence on this subject? That is what Judge Thompson is asking.

By the Witness: There was conversation, but the exact words, I couldn't say.

By the Court: Not the exact words, but in substance. Can you state where the conversation was had, who was

present, and what meeting it was, and give it in substance?

By the Witness: Well, at this meeting when this
831 proposal was presented I, myself, as well as other members of railroads attended this meeting and expressed ourselves that we were not satisfied with the fact that we could go into a $1.25 rate, and that we would have to look into the matter further.

By Mr. Thompson:

Q. Was any request made to have them fortified with book figures?

By Mr. Freeman: Your Honor, I think what counsel is trying to do is to lead the witness after the witness has said he doesn't recall. I assume there is a proper way of proving this, and I don't know what the proof is, but certainly it shouldn't be by leading questions from Mr. Thompson after this witness has said he doesn't know.

By the Court: He may answer.

By the Witness:

A. Undoubtedly, as I said—

By the Clerk: Not "undoubtedly." The objection would be sustained. It is what you remember and what was said about that subject.

By the Witness:

832 A. Well, we were not satisfied that we would go into a $1.25 rate without there being some additional information to substantiate it other than their statement that they required $1.25 a coupon to continue operations.

By Mr. Freeman: I move the answer be stricken.

By the Court: By "they," meaning the Parmelee representative?

By the Witness: Yes.

By Mr. Freeman: I move the answer be stricken.

By the Court: Overruled.

By the Witness:

A. (Continuing) As I recall at that time they stated they would get additional information for us and submit it at a later meeting.

By Mr. Thompson:

Q. Was such information submitted to the group later on?

A. At a later meeting?

Q. Later on.

A. I am quite sure there was. In fact, I am sure there was.

Q. Well, examining the document further, isn't it a fact that there was appended to these minutes the tabulations that were submitted by the Parmelee people
833 at this April 16th meeting, or the 15th meeting?

By Mr. Freeman: The document will speak for itself. We have no objection to this when it is offered at the proper time, the document itself. I don't see why this witness should—

By the Court: Read the question.

(Whereupon the record was read as above recorded.)

By the Court: He may answer if it is a fact.

By the Witness:

A. It is a fact.

By Mr. Thompson:

Q. Do you have any recollection of what arguments were made by the Parmelee people and what prophecies were made, if any, as to the point to which the charges might go in this transportation field?

834 By Mr. Freeman: I object to that. He has already testified he doesn't know. Everything from now on will be pure speculation from this witness.

By the Court: I am confining the witness only to con-

versation not speculation, no undoubtedlys. Do you recall any conversation about what was said by the Parmelee representative or by the railroads on that particular question?

By Mr. Freeman: Your Honor, wouldn't it be appropriate, if I may make the suggestion, if this witness is going to testify to conversations, that he state first who was present and who made the statement? Parmelee is a company, and I assume they had representatives there, and if he is willing to undertake to say who made the statement—

By the Court: If he gives the conversation, I will require him to state who was present, where it was and who said it.

By Mr. Thompson:

Q. All right; who was present at this April 15th 835 meeting representing the Parmelee Company?

A. Mr. Martin and Sy Passolt.

Q. Do you remember whether there were any others there or not?

A. From the Parmelee Company?

Q. Yes.

A. No; I don't recall. I don't recall whether Rhetigen was there or not.

Q. Do you recall whether Mr. Scheeder was there or not?

A. No, I don't recall.

Q. Who was there representing the railroads?

A. Well, there was one representative from each of the 21 carriers. Who they were by name, I wouldn't attempt to recall at this time.

Q. Do you recall who was there representing the Baltimore and Ohio Railroad or the Grand Central Station?

A. I represented the Baltimore and Ohio Railroad.

Q. Do you recall whether any others from that pas-

senger station of the lines that terminate there were present? Do you have any recollection of it individually?

A. No, sir.

836 Q. Can you tell us who was the spokesman for the Parmelee people?

A. Mr. Markin.

Q. What did he say about this request for increase and the railroads' opposition to it?

A. Well, to the best of my recollection he stated it was just that their business operation required them to have an additional increase in their coupon rate, and, as I recall, I think he submitted a scale of coupon rates by the thousands or ten thousands; I don't recall correctly now, as a part of his proposal.

Q. Are you referring to what is incorporated in this Defendants' Exhibit No. 5 as Schedule 3, which consists of two pages?

A. That is right.

Q. And in the course of discussing that schedule do you recall what Mr. Markin said about the amount of the coupon charge presently and prospectively, if you remember?

A. Well, on the basis of the schedule which he submitted—

By Mr. Freeman: I object. The question to you, Mr. Nelson, if I may say so, is what did Mr. Markin say.

837 By the Court: Yes. This would be a nice time to recess until 2:15, if you please.

By Mr. Freeman: Now you can think about it.

By the Court: Have a nice lunch and don't discuss it with anyone.

(Thereupon a recess was taken until 2:15 p.m., of the same day, Thursday, April 28, 1960.)

VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

Office Supreme
FILE
OCT

No. 498

In the United States Court of Appeals

For the Seventh Circuit

No. 13160

PARMELEE TRANSPORTATION COMPANY,

Plaintiff-Appellant,

vs.

JOHN L. KEESHIN, RAILROAD TRANSFER SERVICE, INC., HUGH W. CROSS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD E. SIMPSON, PAUL E. FEUCHT, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius H. Miner, Judge Presiding.

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VOLUME III

U.S.C.A. — 7th Circuit
JAN 13 1961
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The Scheffer Press, Inc.—ANdover 3-6850

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838 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Thursday, April 28, 1960
2:15 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
Mr. John Paul Stevens
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

839 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

840 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

(The following proceedings were had outside the presence and hearing of the jury:)

By Mr. Owens: Your Honor, before the jury is brought out, I have a motion I would like to make.

I understand that Mr. Albert A. Wilbur, real estate salesman for Baird and Warner, has been subpoenaed to appear here tomorrow morning. It is obviously with respect to Mr. Cross' purchase of a home in Deerfield.

By Mr. Thompson: A sale.

By Mr. Owens: Sale or purchase of a home in Deerfield, Illinois. It has no relevancy and materiality to these proceedings, and I am going to ask that Mr. Wilbur be excused from attendance at this hearing until we get to the point where we get beyond the issue of this public injury which the Court has established and that there be no offer of proof made as to what his testimony would be, because it has no relevance here.

By Mr. Freeman: It is completely relevant to the
841 issue of public injury as we see it. We are presenting this witness. We will identify him. We will ask the questions. He can make his objections, and then we will make our offer of proof.

By Mr. Owens: We are not making offers of proof as to how you see things. It is as to how the Court has circumscribed the scope of these examinations.

By Mr. Freeman: We have had this argument many times.

By the Court: Unless the defendants waive his personal appearance or qualification, I will permit him to appear and give his name and address.

By Mr. Thompson: That isn't the objection as far as the defendants I represent are concerned. The objection is that here is an offer of proof being made on a subject which is not before the Court.

If you had separated the issues in a personal injury case as to liability on the one hand and then damages on the other, you would have a clean demarcation of the two issues. That is a simple case.

If they undertook to make even an offer of proof on damages on the liability issue, you wouldn't even hear the offer of proof.

842 By the Court: If they will concede now that is the purpose, I will rule now.

By Mr. Freeman: That isn't the purpose.

By the Court: I can't anticipate.

By Mr. Freeman: We are expecting to put in proof on the public injury issue which we understand includes the conspiracy to violate Mr. Cross' public position. This is the difference that we have had, and all we are doing is making our record.

By Mr. Thompson: He says this has nothing to do—

By the Court: I will rule upon it when he starts in making the offer.

By Mr. Thompson: All right.

By Mr. McConnell: If the Court please, this morning Judge Thompson objected to the document which is marked for identification as Plaintiff's Exhibit No. 35, which the Court sustained.

In so far as the Court sustaining it on the ground that it was evidence of a conspiracy, this argument doesn't go to that at all. I am addressing myself to the question of hearsay, because it has been raised several times in these documents about hearsay, and we have had this same objection made before.

I stated this morning to your Honor that the Court 843 of Appeals in this Circuit was held that that sort of evidence is an exception to the hearsay rule.

I want to call your Honor's attention to the case of American Cooperative Serum Association against the

Anchor Serum Company, which is reported at 153 Fed. 2d., 907, and I am reading from page 912.

In that case witnesses for the plaintiff, who were employees of a corporation, were permitted to testify as to what outside parties not in the corporation told them about things, the same sort of hearsay involved here in this statement here where this man is making a report where he refers to something that somebody told him.

The Court said at page 912:

> "Defendants contend that the court erred in permitting plaintiff's witnesses to testify as to the reason given to the plaintiff by their druggist why the latter could not sell plaintiff's serum at 75 cents which resulted in plaintiff's reduction in price. They urged that such evidence is hearsay, self-serving and thus incompetent. This was not error. Such evidence is an exception to the hearsay rule and is well recognized."

844 They cite Lawler *v.* Lowe,—

By the Court: Is that an anti-trust case?

By Mr. McConnell: This is an anti-trust case, yes. The rules of evidence are no different in an anti-trust case.

By the Court: Yes, they are. I can see the admissibility of it in that case on the item that you have mentioned. It is part of the res gestae.

By Mr. McConnell: It comes in under the exception to the hearsay rule, not of res gestae, but of reports made in the ordinary course of business, which is what this fellow did. He made a report in the ordinary course of business. It was being gone into, the foundation laid on the witness stand, and then they cite a number of other cases, United States Supreme Court cases.

That is our Court of Appeals in the Seventh Circuit speaking there.

845 In United States *v.* General Motors Corporation, which also went up to this Court of Appeals—you

fellows carrying on your conversation over here, can you give us the courtesy of permitting me to address the Court?

By Mr. Meserow: I am sorry.

By Mr. Thompson: Sorry.

By Mr. McConnell: Quoting from the case of United States *v.* General Motors Corporation, 121 F. 2d 376, I am reading from Page 409. The Court said this:

> "The appellants objected to the evidentiary matters constituting Class V on such grounds as hearsay, irrelevancy and immateriality. Illustrative of this evidence is that in the form of certain exhibits which contain statements by GMAC field representatives to their superiors. They found this evidence particularly objectionable as hearsay since the field men making the reports were not called to identify them. Yet these reports were admissible under 28 U.S. Code Annotated, Section 695, 49 Statutes 1561 as recorded acts or transactions made in the regular course of
>
> 846 business."

Now, that particular statute isn't designed just for an anti-trust case. It is designed for any kind of a case, and our position is that this is a well recognized exception to the hearsay rule, where somebody, who is charged with the duty, makes a report to his superior of what he has heard or what he has seen, and so forth.

It may go to the weight of the evidence, as to how much your Honor is going to give weight to it, but as to its admissibility, it is not properly objected to under the hearsay rule.

By the Court: All right.

By Mr. Thompson: Mr. Tone will answer, if the Court wants any further information on it.

By the Court: On that subject? No. I sustain the objection.

Bring out the jury.

(Whereupon in the presence and hearing of the jury the following proceedings were had:)

By the Court: I think you are still on the stand, Mr. Nelson.

By Mr. Freeman: We have subpoenaed Mr. Benjamin Goldstein, a fellow attorney.

847 By the Court: Yes. Will you step up, please, Mr. Goldstein?

By Mr. Freeman: We will only take a minute with him.

By the Court: Mr. Goldstein is merely to identify his signature, I understand.

By Mr. Freeman: Just one document, and that is it.

By the Court: He is leaving town, and I said I was perfectly willing to have him now.

BENJAMIN F. GOLDSTEIN, called as a witness by the Plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and address.

A. Benjamin F. Goldstein; 190 East Pearson Street, Chicago, Illinois.

Q. Are you a practicing attorney at law?

A. Yes, sir.

By the Court: He has been. He is retired.

By Mr. Freeman: Yes, he is a fortunate person.

By the Witness: I am still active in the consulting

848 field.

By Mr. Freeman:

Q. Mr. Goldstein, in 1955, did you represent the Railroad Transfer Service, Inc., and Mr. John L. Keeshin?

A. Beginning with June 18, 1955, I became attorney for Railroad Transfer Service, Inc.

Q. And you represented them for the rest of that year?

A. Yes, sir.

By Mr. Freeman: I don't need to go beyond that. I would like to have marked for purposes of identification as Plaintiff's Exhibit 38 this two-page letter from Mr. Goldstein to the Mayor of the City of Chicago, dated September 24, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit 38, for identification.)

849 By Mr. Freeman:

Q. Mr. Goldstein, I show you the two-page document that has been marked as Plaintiff's Exhibit 38 for identification, and I ask whether the signature on that paper is your signature.

A. It is.

Q. Was this letter and communication to Mayor Richard J. Daley prepared by you?

A. It was.

Q. And was it transmitted to the Mayor on behalf of the Railroad Transfer Service, Inc.?

A. I transmitted this letter as attorney for Railroad Transfer Service, Inc., as indicated in the letter.

Q. And did you send copies of this letter to the Corporation Counsel of the City of Chicago and to the Chairman of the Committee on Local Transportation?

A. Page 2 of the letter shows that I sent a copy of this letter to Mr. John C. Melaniphy, Acting Corporation Counsel, City of Chicago, and Alderman Paul M. Sheridan, Chairman, Committee on Local Transportation of the City Council of the City of Chicago and I did send it.

By Mr. Freeman: I offer this letter in evidence as Plaintiff's Exhibit 38.

850 By the Court: Is there any further examination?

By Mr. Freeman: I want to get rid of him, yes.

By the Court: Do you have any more questions?

By Mr. Freeman: I have no questions after the letter is in.

By the Court: Do you want to cross examine him?

By Mr. Thompson: No.

By Mr. Freeman: Is the letter admitted? I would like to hear their objections before he leaves.

By the Court: All right.

By Mr. Thompson: If the Court please, I object to this offer as being utterly irrelevant to any issue in this case, much less the limited one we are dealing with, as being written by the attorney for this transfer company after the contract was awarded.

By the Court: Let me see it.

By Mr. Thompson: It couldn't possibly have anything to do with the business at hand.

851 By Mr. Freeman: Your Honor, it is exactly in point on even the very, very narrow issue that you have presented us with.

By Mr. Thompson: Public injury?

By Mr. Meserow: May I see the original?

By Mr. Freeman: Your Honor, if you will start at the bottom of page 1, paragraph 3—

By the Court: Let me read it, please.

All right, Mr. Freeman?

By Mr. Freeman: Well, this is a letter written by a representative of one of the defendants. It is an admission against interest with respect to the scope of the service. You have indicated that one of the issues that you want evidence on is the differences in the service proposed by Keeshin as against that rendered by Par-

melee, and this deals with that very issue, and therefore it is precisely relevant, and of course completely competent.

By the Court: It pertains to a contract already executed.

By Mr. Freeman: It pertains to proposed service by Keeshin as against the service rendered by Parmelee
852 during that very time. We were rendering service on September 24 up to October—

By the Court: Objection will be sustained.

By Mr. Freeman: Excuse me?

By the Court: Objection will be sustained.

By Mr. Freeman: You mean I cannot present this to the jury?

By the Court: No, you can't. It applies to a contract executed and in force.

By Mr. Freeman: With whom?

853 By the Court: Between Keeshin and the railroads.

By Mr. Freeman: That is what we are talking about here. The contract that Keeshin proposed to the railroads, and this describes that Keeshin proposal.

By the Court: Was it already executed?

By Mr. Freeman: It was executed on September 15, but it nevertheless describes that very contract and indicates what the circumstances are of the service that is proposed.

By Mr. Meserow: The contract would be the best evidence, your Honor. This is merely an opinion of a lawyer.

By Mr. Keating: A conclusion of the writer.

By the Court: Objection will be sustained.

By Mr. Keating: Thank you.

By Mr. Freeman: Mr. Goldstein, will you stay on the stand, please.

By Mr. Freeman:

Q. Mr. Goldstein, at the time did you have a
854 knowledge of the relative service that was to be performed by the Railroad Transfer Service, Inc., as compared to the service then being performed by Parmelee Transportation Company for the transfer of passengers?

By Mr. Meserow: I object to the question, if the Court please. He is asking for privileged information between a lawyer and a client.

By Mr. Freeman: It isn't privileged. It is public information. I am not asking for any communication between him and his client. This is not privileged.

By Mr. Meserow: You are asking for facts which he learned from his relationship of lawyer and client.

By the Court: I will let him answer.

By the Witness:

A. Would you please clarify your question? Do I understand your question to be did I know the contracted service of the two—

By Mr. Freeman:

Q. Yes.

A. Or did I know the implementation of the con-
855 tract? Which is it you are asking?

Q. I am asking you whether you know the service that was proposed by Keeshin commencing October 1, 1955, as compared to the service rendered by Parmelee up to October 1, 1955?

856 A. This letter refers to the executed contract—

Q. Would you answer my question, Mr. Goldstein?

A. Not proposed to be. It was the service which was indicated in the contract already executed versus the contractual service in which Parmelee had agreed to perform the services which were then in existence.

Q. Is it true that under the Keeshin arrangement—

A. You mean the Railroad Transfer?

Q. Under the Railroad Transfer Service, Inc. arrangement, the passenger could not use his transfer coupon to take the Railroad Transfer Service, Inc. vehicles to the Loop hotels or business destinations?

By Mr. Meserow: I object to the question, your Honor.

By The Court: The objection will be sustained.

By Mr. Freeman:

Q. Was there a wide cleavage in the services to be rendered by the Railroad Transfer Service, Inc. as against the Parmelee service then being rendered?

By Mr. Meserow: Objection to the question as calling for a conclusion.

By The Court: Objection sustained.

By Mr. Freeman:

Q. Was the railroad service limited in substantial
857 respects with respect to the railroad passengers that had available to them these transfer coupons?

By Mr. Keating: Same objection, as a conclusion.

By The Court: The same ruling.

By Mr. Freeman: That is crazy.

By Mr. Meserow: I object to the comments of counsel in the hearing of the jury.

By Mr. Thompson: He made a comment which was intended for the jury's attention, but, of course, the jury is too intelligent to pay any attention to it.

By Mr. McConnell: We can confer here amongst ourselves. If you don't like it, that is too bad. We have a right to confer. We are not talking to the jury. We have not said anything to the jury. We are talking between ourselves.

Offer the document, and that is all you can do.

By Mr. Freeman:

Q. Mr. Goldstein, did you negotiate or participate in the negotiations of the arrangements entered into by
858 the railroads with the Railroad Transfer Service, Inc.?

By Mr. Meserow: I object to the question on the grounds of privilege.

By The Court: He may answer.

By The Witness:

A. Beginning with the date I was retained to act as counsel for Railroad Transfer, Inc. I performed all of the services which, as counsel for that company, in my opinion were necessary or desirable to be performed for the interests of my client in trying to consummate the transaction between the client and the railroads.

By Mr. Freeman:

Q. In that connection did you have available to you a detailed summary of all of the services rendered by the Parmelee Transportation Company?

A. On June the 18th?

Q. No, during the time of your negotiations and prior to September 15.

A. I had the contractual arrangements available to me, yes.

Q. You had contractual arrangements?

A. The documents indicating the character of the service that Parmelee was to perform. Of course, I had those available, the documents.

859 Q. Were these prepared for you in memorandum form?

A. I don't have the slightest notion whether they were prepared, whether they are matters of public record or the ordinance. There were various sources. I came here on a subpoena to discuss—to identify this letter. I have not checked the other record, but they are matters of public

record. There was a franchise that they operated under.

Q. At the time you wrote this letter, Mr. Goldstein, did you realize it was a correct and truthful statement of the facts?

By Mr. Meserow: I object to the question.

By The Court: Objection sustained.

860 By Mr. Freeman:

Q. Did you seek to misrepresent to the Mayor when you wrote that letter?

By Mr. Meserow: I object, your Honor.

By The Court: Objection sustained.

By Mr. Freeman: I will make an offer of proof on that letter. Thank you, Mr. Goldstein.

(Witness excused.)

By Mr. Freeman: I wish the jury could be excused while I make the offer.

By Mr. Thompson: You can make it some other time.

By Mr. Freeman: Thank you, Mr. Thompson, but I would like to offer it now. Would you like me to delay my offer until later?

By The Court: If you please, until Nelson is through. When I excuse the jury you can discuss it with me.

By Mr. Freeman: All right.

By Mr. Thompson: Are you through for the moment?

By The Court: Call Mr. Nelson to the stand.

STANLEY F. G. NELSON, called as an adverse witness by the Plaintiff herein, having been previously duly sworn, resumed the stand and testified further as follows:

861 *Cross Examination (continued) by Mr. Thompson.*

Q. By the way, Mr. Nelson, you said you thought that Mr. Passolt was at this meeting in April of 1954.

The fact of the matter is he had died a few months before that, hadn't he?

By Mr. McConnell: I think the witness ought to be allowed to testify to something here. Thompson stands here and tells him—puts words in his mouth.

By Mr. Meserow: He is getting your bad habits.

By Mr. McConnell: I had not led any witness except on cross examination where I had a right to.

By Mr. Thompson: We are cross-examining this witness. They put him on the stand pretending that he was an adverse witness as far as the Baltimore and Ohio Railroad is concerned, but so far as all the other defendants I represent—

By The Court: I will let him answer.

By Mr. Thompson: —his cross examination is proper.

862 By The Witness:

A. I thought he was alive at that time. I think I mentioned also Mr. Markin and Mr. Rheingten were there. Mr. Passolt, if he had passed away, quite naturally wasn't there at that meeting.

By Mr. Thompson:

Q. You don't remember when he had passed away?

A. No.

Q. He had attended meetings previously?

A. Representing the Parmelee Company, yes, sir.

Q. In April, 1954, when you were discussing these dealings with the representatives of Parmelee Transportation Company, which certainly included Mr. Markin, and you say he was the spokesman, did he say to the railroad representatives that he required a coupon of $1.32 to $1.35 to break even?

By Mr. Freeman: I object. I don't like to keep objecting, but this witness had previously said he didn't know

anything about it. Now, he has had a recess and Mr. Thompson leads him into what the discussion was. I don't think this is very proper procedure.

By The Court: Are you talking about the same
863 conference?

By Mr. Freeman: The same meeting in which he said he knew nothing, that he couldn't recall anything.

By The Court: Proceed.

By Mr. Thompson:

Q. Do you recall?

A. Are there any minutes of that meeting where I can refresh myself?

A. I certainly can't recall offhand. Quite a few years have transpired.

864 By The Court: Have you exhausted your memory now as to what was said at that meeting?

By The Witness: Yes.

By The Court: You may refresh his recollection if you wish.

By Mr. Thompson: Mark this document as Defendants' Exhibit No. 6, for identification.

(Thereupon said document was marked Defendants' Exhibit No. 6 for identification.)

By Mr. Freeman: Your Honor, I object to this memo being submitted to the witness. It is a memo prepared by the Santa Fe from Mr. Anderson to Mr. Duffy, and it certainly is not within this witness' organization.

By The Court: In my understanding of the law for refreshing one's recollection, it may be from anything, a telephone book if it will refresh his recollection.

By Mr. Thompson: There is no question pending, and I have not asked the witness anything about the document.

By The Court: He is addressing himself to the
865 property of—

By Mr. Freeman: Of identifying this document and handing it to the witness to refresh his recollection. I don't think this memo was prepared in this witness' organization, and Mr. Thompson has been seeking to segment these railroads, and he is using another memorandum for this purpose.

By The Court: Overruled.

By Mr. Thompson:

Q. Mr. Nelson, I hand you a document which has been marked for identification as Defendants' Exhibit No. 6, and I direct your attention to the second paragraph of that document, and I inquire whether or not that document refreshes your recollection as to what was said on the subject for discussion at this April, 1954 meeting with Mr. Markin.

By Mr. Freeman: I have a further objection, your Honor. I object to this entire line of examination. It has nothing to do with the current negotiations that occurred in 1955. This has to do with 1954, and it is not relevant or material to the issues that are before this
Court with respect to the contract that was negotiated
866 with Keeshin.

By The Court: If it serves to refresh his recollection, it is proper.

By Mr. Freeman: You say it is proper?

By The Court: If it serves to refresh his recollection for any subject he may be inquired on under the rules of evidence.

By Mr. Freeman: Let me mention a few objections to this line of examination so that you may rule upon them.

No. 1, this examination is not relevant to anything I inquired of this witness, and it is rather fundamental in

our jurisprudence that the cross examination or redirect examination should be germane to whatever is inquired about of the witness.

It is not relvant and not germane.

By The Court: That is correct.

By Mr. Freeman: Secondly, it is not material or relevant to the issues that you yourself have staked out in this case, the public injury that results from selecting Keeshin rather than Parmelee. We say that public injury is broader so that it includes conspiracy which resulted
867 in an arbitrary decision for Keeshin.

If Judge Thompson is proceeding to determine motivations and all of them, but otherwise, this examination Honor must give us the opportunity to go into those motivations and all of them, but otherwise, this examination is completely irrelevant.

By The Court: I don't know what it is. I have not heard any questions.

By Mr. Freeman: It has to do with 1954. You have been listening to it for an hour, your Honor. All of this examination of Mr. Nelson up until now has to do with previous negotiations. This negotiation, for example, terminated in April, 1954, before there was Keeshin anywhere in the picture.

By The Court: Again I would like to remind you that your direct examination has covered a period of years including the '40's.

By Mr. Freeman: It did not, your Honor. I asked him how long he was with the railroad.

By The Court: I recall three or four meetings in
868 different times and different conversations.

By Mr. Freeman: Yes, and every meeting that you recall, and the reporter will so advise us, starts with January, 1955. I did not proceed with any examination of witness prior to 1955.

869 By Mr. Meserow: You talked about his bid in 1954.

By Mr. Freeman: He put a bid in in December of 1954, and this is April of 1954, and all of this conversation is of April, 1954. It has no relevancy to my examination. If Mr. Thompson wants to put in his case, he can put it in when his time comes.

By Mr. Keating: Your Honor, the committee was appointed in January of 1954, and they proceeded for 18 months to the middle of 1955, and this is the area of negotiations.

By The Court: As I recall the evidence, the question of the acceptability and satisfaction of the service of Parmelee was all admitted into evidence, both good and bad, by previous witnesses.

By Mr. Freeman: There was no bad.

By Mr. Keating: I object to the evaluation by Mr. Freeman.

By The Court: This man testified he had complaints. I don't know what the next question is, but the ob-
870 jection is overruled.

By Mr. McConnell: I object to the Court's statement of the evidence, and I move to strike it out of the record.

By Mr. Keating: I move to strike Mr. Freeman's statement as to the evidence.

By Mr. Thompson: I should think counsel would be courteous enough to keep still until the Court finishes his ruling.

By The Court: Objection overruled. Proceed with your question, and I will hear what it is.

By Mr. McConnell: I move Mr. Thompson's statement be stricken from the record.

By The Court: I wish counsel would not make resent-

ful remarks to each other, both sides. When the Court makes a ruling, it is for the record, and I don't mind if you take exceptions to them, but I don't approve of resentful mumblings to each other so the jury can hear. Proceed.

By Mr. Freeman: What is the question, Mr. Thompson?

By Mr. Thompson:

Q. Does the witness know?

871 A. No, I am afraid I don't.

By The Court: All he said was read Paragraph so-and-so, and does it refresh your recollection? That is all I remember.

By Mr. Thompson: That is right.

By Mr. Thompson:

Q. I inquired whether the pragarph of which I have directed your attention in this document, Defendants' Exhibit No. 6 for identification, refreshes your recollection that at this—

By Mr. Freeman: Refreshes his recollection; isn't that the first question, Mr. Thompson?

By Mr. Thompson:

Q. (Continuing) —refreshes your recollection as to whether at this April, 1954 meeting Mr. Markin advised the terminal lines that he would have to have between $1.32 and $1.35 per coupon to break even?

By Mr. Freeman: Your Honor, the document is not in evidence. The question should be, does it refresh his recollection?

By The Court: Strike the question. I will ask

872 counsel to reframe it. It is leading and suggestive, and if it refreshes his recollection, he may testify what he recalls.

By Mr. Thompson: I admit it is leading, your Honor.

By The Court: I beg your pardon?

By Mr. Thompson: I admit it is leading, and I take the position that this is cross examination.

By The Court: I think the witness is an experienced witness, and he knows—he was at the meetings, and he can testify.

By Mr. Thompson: I accept the Court's limitation.

873 By Mr. Thompson:

Q. Does this paragraph in this memorandum refresh your recollection as to anything that was said at that meeting?

A. It does.

Q. What is your recollection with respect to what Mr. Markin said as to the required coupon rate he needed to break even?

A. Well, Mr. Markin made the statement that his company had suffered losses during the first three months in the amount of $142,000, as I recall, and therefore in order to partially recoup some of that money, he would need a Parmelee rate going as high as $1.35.

Of course, that was not acceptable, and a counter-proposal was offered to Parmelee company of $1.20 effective on April 1, 1954.

This, in turn, was not acceptable to Mr. Markin, and the rails then reconsidered and offered him seven and a half cents a coupon retroactive to January 1, 1954 to the 1st of April of that year, after which they would then raise the rate to $1.20 plus one cent for each three cents

of his wage increase in his negotiations with the union

874 which would be effective with his new contract if and when it was settled on July 1, 1954.

875 Q. Very well.

A. And that negotiation in contract was settled some time in September of that year, and it amounted to two cents a coupon, which we paid to Parmelee retro-

active to July 1st, 1954, and I think it was on October 1st or September — October 1st, that we started paying them $1.22 a coupon.

Q. Retroactive back to July 1st?

A. Yes. We paid in the two cents from the September to July 1st period.

Q. All right. Now I inquire as a matter of refreshing your recollection, do you recall whether Mr. Markin said anything about furnishing his book accounts of costs and operation to back up his request for $1.25 per coupon?

A. He refused in that instance, and had in every previous instance that we had requested a net gain or loss statement from him concerning the direct Parmelee transfer operation. We had never been successful in that direction.

Q. Did he make any statement as to how much he would require as a percentage of profit on his investment to continue in the business?

A. Well, he made a statement at one meeting that 876 if he couldn't make at least ten percent on his money, why, he would go out of business.

Q. We have already covered, I think, this September meeting at which you interviewed a number of people. Now when the Keeshin proposal came in, December 15, proposing $1.20 a coupon, you were then paying Markin $1.22 per coupon?

A. That is correct.

Q. And previously in January of 1954, ahead of Keeshin's proposal, Markin had demanded $1.25 and had —

By Mr. Freeman: I object to the characterization demanded. A request was put in and there was negotiation.

By the Court: I think that is sound.

By Mr. Thompson:

Q. (Continuing) — had requested $1.25 a few months before?

A. That is right.

Q. Now, who pays the coupons that are used in this local transportation service?

A. The receiving rail carrier pays it. It is not paid by the passenger at all or included as any—

877 By the Court: I think you ought to explain what you mean by rail carrier. I don't understand it, and I don't think the jury does.

By Mr. Thompson: Receiving carrier, he said.

By the Witness: The outbound carrier, whatever railroad was used on the outbound trip would be the receiving carrier.

By the Court: The railroad company?

By the Witness: Yes.

By Mr. Thompson:

Q. And you were saying something more?

A. It is not included in the cost of the ticket. It is service that is furnished free of charge by the railroads.

By Mr. Freeman: I move that that be stricken. That is a conclusion of the witness, your Honor. The jury should determine whether or not the public pays for the service.

By the Court: Objection overruled.

By Mr. Thompson:

Q. Well, Mr. Nelson, to be specific about it, if one goes into the B&O Station down here and buys a

878 ticket from Washington, D. C., to Denver, Colorado, the coupon is in the through ticket, is it?

A. There is a coupon in the through ticket, and it is in there at no charge whatsoever to the passenger.

By Mr. Freeman: I move to—

By Mr. Thompson:

Q. The ticket would cost identically—

By Mr. Freeman: I move to strike the last part of the answer.

By the Court: The last part may be stricken. It wasn't responsive to the question.

By Mr. Thompson:

Q. Mr. Nelson, if the ticket were sold without the coupon in it, if one didn't want it, would he get any reduction in the price of his through ticket?

A. No.

Q. How many coupons, on the average, does the B&O Railroad pick up every day?

A. Well, we have, I would say, fifty thousand to fifty-seven thousand a year, so whatever that is, broken down to a daily percent.

Q. Then the average would be one three hundred
879 and sixty-fifth of what number, did you say?

A. Fifty thousand to fifty-seven thousand a year.

Q. Fifty to fifty-seven thousand a year?

By Mr. Meserow: Seventy thousand.

By Mr. McConnell: I move to strike out the testimony of counsel on the other side.

By Mr. Thompson: I think that would help.

By the Court: Proceed.

By Mr. Thompson:

Q. All right, what is the answer?

A. It runs from fifty thousand to fifty-seven thousand a year on the B&O.

880 Q. All right.

Now the B&O, I think it was brought out yesterday by Mr. Freeman, is one of the railroads that has one of the lower percentages of the coupons that it picks up here in this transfer service?

By the Court: 4.37, was it?

By the Witness: 4.37.

By Mr. Thompson:

Q. 4.37 of the total coupons picked up here in Chicago is picked up by the B&O, is that right?

A. That is right. At least, at the time that statement was made up.

Q. Well, sure, that was five years ago.

A. Five years ago.

Q. Do you think it is relatively about the same or do you have any experience?

By Mr. Freeman: What difference does that make, your Honor? I mean, aren't we interested in what happened in 1955? Isn't that the purpose of this inquiry and lawsuit?

By the Court: I can't presume what Judge Thompson has in mind. Make your objection to the question.

881 By Mr. Freeman: All I can do is make my objection that it is immaterial.

By Mr. Thompson: Good.

By the Court: That is right. I presume your point is to show the percentage, Judge Thompson?

By Mr. Thompson: Oh, my point is just whether or not there has been any — and it is not very much of a point, I will admit — whether there has been any great shift in the relative proportion of the tickets the different receiving railroads pick up.

By the Court: He may answer.

By the Witness:

A. Our percentage is at least 5 per cent. Possibly it has increased one or two per cent more.

By Mr. Thompson:

Q. Now is there a difference in the competitive position of the railroads in this community as to which or whether some need it more than others?

A. Quite naturally with the number of stations you have and the number of what we call "feeder lines" into stations. That would affect our station particularly because our only feeder line is the Soo Line and the

882 Pere Marquette Railroad, whereas the Union Station,

for instance, has the GM&O, the Burlington and the Milwaukee railroads, which are feeder lines in their business from the west to the east.

Q. Plus the Pennsylvania? You didn't mention that.

A. Well, the Pennsylvania is our competitor. I am talking about feeder lines.

Q. Oh, you are talking about ones that feed into—

A. The lines that feed the traffic from the west and the south to the east.

Q. I assume, then, the Pennsylvania is one of the lines competing with the B&O?

A. That is our direct competitor in business to Washington and other eastern points.

Q. And if a passenger comes into Chicago on the Pennsylvania and is going out on the Burlington, he just gets off the train at the Union Station and gets onto the Burlington?

A. That is right.

Q. Whereas if he comes in on the B&O then he has to be transported over to the Union Station to get the Burlington?

A. That is right.

By Mr. Thompson: That is all I have.

883 By the Court: Does any other defendant wish to ask questions?

By Mr. Meserow: I would like to ask Mr. Nelson a few questions.

Cross Examination by Mr. Meserow.

Q. Mr. Nelson, have you had occasion to see the Parmelee equipment that was used at the stations in the transfer operation? That is the Parmelee equipment.

A. When it was in operation?

Q. When it was in operation.

A. Yes, sir.

Q. Did you ever ride in any of their cars?

A. I did.

Q. Could you briefly describe what they were, these Parmelee cars?

A. I believe at that time they were seven-passenger vehicles.

By the Court: What was the question?

By Mr. Meserow: I asked what they looked like.

By the Witness:

A. I think it was a seven-passenger vehicle with
884 space in the rear for baggage.

By Mr. Meserow:

Q. Now being a seven-passenger vehicle, that is aside from the driver?

A. Yes, that would be, as I recall.

Q. Didn't they have two, what they call, jump seats in the back, little round seats?

By Mr. Freeman: When?

By the Court: I think counsel is entitled to know when, what year.

By Mr. Meserow:

Q. Prior to October 1st, 1955.

By Mr. McConnell: They were in business 102 years.

By Mr. Meserow: They had some from 102 years ago.

By Mr. McConnell: No, they didn't, and I object to your testimony.

By the Court: I am not going to permit reducing this to a show. Now let's try a lawsuit. They have a right to have you limit it to the last two or three years.

885 By Mr. Meserow:

Q. Will you describe the Parmelee vehicles for the years 1953 to 1955, October 1st. Now, you said they were seven-passenger. They had three seats in the back, correct?

A. Three.

Q. In the rear seat?

A. Three in the rear seat, and then two intermediate seats.

Q. That is the jump seats?

A. Or jump seats, and then the front seat with the driver. There were two entrances.

Q. In other words, two would have to sit with the driver, is that correct?

A. To make it seven, yes.

Q. Who manufactured these vehicles, do you know?

A. Well, I have heard mentioned who manufactures them, but I don't know for sure.

By the Court: You can't testify to what you heard. If he knows.

By Mr. Meserow:

Q. Do you know?

A. No, I don't know for sure.

Q. Now what color were these vehicles?

886 By Mr. Freeman: I don't think that makes any difference, does it, your Honor?

By the Court: I don't either. If you are talking about comfort, that is one thing. If you are talking about color, it is a matter of personal taste.

By Mr. Meserow:

Q. All right. Did you ever ride in these vehicles?

A. I have ridden in them.

Q. Were they comfortable?

A. Not particularly.

Q. Were they clean?

A. Yes, I would say they were clean.

Q. Now have you any ideas as to the average age of these vehicles that were used by Parmelee in the years, let's say, 1954 and 1955, prior to October 1st, 1955?

By Mr. Freeman: I object to that. It isn't necessary to imagine that. We will put in the years. I mean, we

will put that evidence in, I assure Mr. Meserow of that, so the jury will know the actual facts of when that equipment was put into service.

By the Court: He may answer.

887 By Mr. Freeman: But he is asking him to imagine it.

By Mr. Meserow: I didn't say imagine. I asked him if he knows.

By Mr. Freeman: If he knows what year? All right.

By the Witness:

A. No, I don't.

By Mr. Meserow:

Q. Well, isn't it true, Mr. Nelson, that some of these cars that were used by Parmelee in 1954 and 1955 were as much as five or six years old?

By Mr. Freeman: I object to that. He said he didn't know, and this is a false statement of counsel.

By the Court: That is correct. It may be stricken.

By Mr. Meserow:

Q. Did Parmelee enjoy any stewardesses, uniformed stewardesses, as Railroad Transfer does at the present time at the stations?

A. No, they did not.

888 By Mr. McConnell: I object to his testimony about what Railroad Transfer does at the present time. I move to strike it out.

By the Court: That part may be stricken.

By Mr. Meserow:

Q. Did Parmelee employ any stewardesses at the stations to take care of the problems of passengers coming and going?

A. They did not.

Q. Does Railroad Transfer employ uniformed stewardesses at the present time, since October 1st, 1955, to

take care of the passengers coming in and going out of the stations?

A. They do.

Q. Now, Mr. Nelson, there was introduced, I think, as Parmelee Exhibit No. 35, something about 400 servicemen being transferred from one stataion to another. Were you in your present capacity with the B&O Railroad, or were you with the B&O Railroad during the years of 1946 and '47, during World War II, and a year after?

A. I was.

Q. Isn't it true, Mr. Nelson, that when Parmelee was operating this service, and a big group of servicemen came in and had to be transferred from one station 889 to another, that Parmelee had them marched over from one station to another and didn't take them over on their vehicles?

By Mr. Freeman: That is so objectionable, your Honor.

By the Court: Sustained.

By Mr. Freeman: It is repugnant to all sense of decency.

By the Court: It may be stricken.

By Mr. Meserow: That is all.

By Mr. Keating: I have a couple of questions.

Cross Examination by Mr. Keating.

Q. Mr. Nelson, were you stationed in Chicago in 1950?

A. I was.

Q. Do you recall the interruption of Parmelee's service at about that time?

A. That is right. There was a strike.

Q. Can you tell us approximately how long that interruption was?

By the Court: What year was that?

By Mr. Keating: 1950.

By Mr. Freeman: He already testified to it. It
890 was May to December, 1950.

By Mr. Keating:

Q. Do you know where the LaSalle Street Station is?

A. I do.

Q. That is where the New York Central operates?

A. That is right.

Q. How far is that from the B&O Station?

A. Two and a half blocks.

Q. Now when the service was interrupted at your terminal, do you know as a fact whether the service was interrupted at the LaSalle Street Station?

By Mr. Freeman: As a fact?

By Mr. Keating: Mr. Freeman seems to have some objection—

By Mr. Freeman: I don't know why you put it. I will concede there was a strike affecting all the stations.

By the Witness: I was going to say it affected all the stations, not just our station.

891 By Mr. Keating:

Q. All right.

Mr. Nelson, do you recall whether a provision was made at that time for the railroads to redeem the Parmelee coupons direct to the railroad customers?

A. That we did.

Q. That was done by the railroads at that time in the way of a redemption or a refund?

A. We picked up the coupons and offered the passengers cash.

Q. How much cash?

A. 60 cents for each coupon.

Q. And that was for taxi cab service, was it?

A. That is right.

Q. And those were Mr. Markin's cabs, do you know?

A. Well,—

By Mr. Freeman: I object to that.

By the Court: Sustained.

By Mr. Freeman: What is this "Mr. Markin's cabs"?

By Mr. Keating:

Q. Do you know if Mr. Markin has any interest in the Yellow and Checker cabs?

892 By Mr. Freeman: I am objecting to that also.

By the Court: Read the last question.

(Whereupon the question was read as above recorded.)

By the Court: I think we have it before the jury. If he knows of his own knowledge.

By Mr. Keating:

Q. Specifically let me ask this: Do you know whether the plaintiff, Parmelee Transportation Company, had any interest at that time in Yellow and Checker cab companies?

A. They did.

By Mr. Keating: Thank you.

That is all I have.

By Mr. Freeman: Just one question on this last point.

Redirect Examination by Mr. Freeman.

Q. Are you saying that the Parmelee Transportation Company had an interest in the Checker Taxi Cab Company in Chicago?

A. I had been informed by one of your people at one time or another that that was part of their operation.

893 Q. No. Does the Parmelee Transportation Company have any interest, stark interest or direct or indirect interest in the Checker Taxi Cab Company in Chicago that you know of?

A. I can't say that positively.

Q. As a matter of fact, isn't it true that they have no interest in Checker Taxi Cab Company?

A. I can't say that positively.

Q. You were asked by Mr. Keating about this 60 cents that you gave the passengers. Now that took care of the passenger movement between stations, but then wasn't it also necessary to take care of baggage?

A. That is right.

Q. And the railroads handled that baggage at considerable cost, did they not?

A. We handled that baggage.

Q. At considerable cost, Mr. Nelson?

A. Well, we were only paying 60 cents for the transfer of a passenger, so we were saving the difference between that and what the Parmelee rate was, so the ultimate may not have been additional cost.

Q. What was the Parmelee rate in 1950? 85 cents?

A. No, $1.00 or $1.05. It was $1.00.

Q. Was it a dollar?

894 A. A dollar in 1950.

Q. Did it cost you more than 40 cents per passenger to bring baggage across?

A. I never checked into those figures, sir.

Q. You never prepared any memoranda to that effect?

A. No, sir, I never checked into the figures of what it cost.

Q. Did you prepare a memorandum?

A. No.

Q. All right.

Now you have indicated also that Railroad Transfer Service had stewardesses to help passengers, and Parmelee didn't have stewardesses?

A. That is right.

Q. But did Parmelee have passenger agents at each station?

A. They did.

Q. Did Parmelee have baggage agents at each station?

A. They did, same as Railroad Transfer has the same thing in addition to stewardesses.

Q. Do you know how many employees Railroad Transfer has?

A. No, sir.

Q. Did you know how many employees Parmelee had?

895 A. They gave us a figure once, but I wouldn't know what they are now.

Q. Well, wasn't it true that Parmelee had in 1955 possibly three times as many employees as Railroad Transfer has now?

A. I wouldn't have any idea.

Q. Mr. Nelson, we spoke of the equipment that Parmelee had in service in 1955, and you were asked about comfort. Let me just ask you about two items, two elements in that equipment as compared to the station wagons used by Keeshin.

Was there more head room so that the passenger could get in and out of the Parmelee vehicles easier, more head room than in the station wagons?

A. I wouldn't attempt to say.

Q. Did you try to get in and out of the station wagons?

A. That I did.

Q. Did you have any difficulty getting into them?

A. As far as I am personally concerned, I have difficulty getting in and out of any vehicle because of my height, so I couldn't honestly answer you one way or the other.

896 Q. Then are you conscious of the amount of head room that there is in a vehicle that you get in and out of?

A. Yes.

Q. Didn't you find that you had more head room in the Parmelee limousines and vehicles?

A. I do not recall. I do not.

Q. All right. Secondly, the station wagons, as they were operated, provided for the baggage to just be loaded in the back of those station wagons, is that right?

A. I believe that there was a partition back there.

Q. Was there a partition?

A. I am sure there was.

Q. But with the Parmelee vehicles, were they specially built so that the baggage compartment was separated from the passenger compartment?

A. It was.

Q. And when the baggage was loaded, the passengers were not exposed to the elements, were they, in the Parmelee operation?

A. They are not exposed to the elements now. In our stations the loading is done, so the baggage and passengers—

897 Q. If a station wagon's rear door is opened to put baggage in, does the air from the station hit the passengers?

A. It does.

Q. Whatever air it is.

A. That is right.

Q. Those are the elements I was thinking of—

By Mr. Meserow: Hot air is what is getting in now.

By Mr. McConnell: I move to strike that.

By the Court: Counsel has got to refrain from such comments. It doesn't register with me or with the jury. I tell the jury to disregard everything they hear or they see except what is being ruled by me on the witness stand.

By Mr. Freeman: I would like to tell your Honor that Mr. Meserow makes no impression on me either.

By the Court: That may be stricken also.

By Mr. Freeman:

Q. Mr. Nelson, you stated here that the public in no instance pays for the transfer coupon?

A. Not in no instance. There is a small perimeter
898 around the City of Chicago where the fare is charged.

Q. You want to change your testimony?

A. Where the fare is charged, it is part of the tariffs.

Q. I know it is part of the tariff. I am thinking of your testimony, Mr. Nelson, now. What is your testimony?

A. He spoke of a passenger going from Washington to Denver.

Q. I want to speak of a short-haul passenger who originates within a hundred miles of Chicago and wants to go through Chicago to Los Angeles. Would he personally have to pay the transfer charge if he wanted to use this transfer service?

A. He would.

Q. And your tariffs specifically provide, do they not, that all passengers who either originate or who are destined to these perimeter points, stated as $2.98 as the cost of a first-class ticket, those passengers must pay this transfer charge if they want to use the transfer service?

A. That is right.

Q. And they pay it personally?

A. That is right.

899 Q. Don't you regard the railroads as part of the public? When the railroads pay for this cost—

By Mr. Meserow: Objection to that question; calling for a conclusion.

By the Court: Objection sustained.

By Mr. Freeman: He has used the expression public. I objected to him using it because I felt the jury should have the prerogative to determine what is the public.

But since he has used it, I want to know from him whether he regards the railroads who are paying most of the cost of this transfer as part of the public?

By the Court: Objection sustained.

By Mr. Freeman:

Q. Are the railroads owned by stockholders, Mr. Nelson?

A. They are.

Q. Are these transfer costs part of the cost of operation of the railroads?

A. They become part of the cost.

Q. Didn't you write a memorandum that I read to you dealing with the question of passenger costs imping-
900 ing upon our freight rates ultimately? You did not?

By Mr. Meserow: Answer the question.

By the Witness:

A. No, sir.

By Mr. Freeman:

Q. You were asked whether or not Mr. Markin asked at one meeting or another, asked for a return of ten percent, do you remember that?

A. Yes, he made that.

Q. Wasn't it true that Mr. Keeshin in his negotiations with your committee said that he wanted a ten-percent return?

A. Not that I recall.

Q. You don't recall that?

A. No, sir.

By Mr. Freeman: I will come back to that in a minute.

By Mr. Freeman:

Q. Mr. Nelson, are there other elements of cost in this transfer service that the passenger directly pays for?

A. Well, there are other phases of transfer in the City of Chicago.

Q. That the passenger directly pays for and with
901 which you contracted with Mr. Keeshin?

A. Your train-to-train transfer of hand baggage in Chicago.

Q. I am thinking of the movement of baggage between stations which hasn't been checked through in advance. Does the passenger make a payment for that movement of baggage?

A. Well, a passenger wouldn't very likely not check his baggage from point of origin to destination. He wouldn't check it to Chicago and then have it transferred over to the station he is departing from. He checks it through.

902 Q. I am asking you, is there a service, Mr. Nelson, provided for the transfer agent that where a passenger comes to Chicago, either accompanied by his baggage or checks his baggage to Chicago, and then decides to have that baggage transferred over to another station, that the transfer agent will transfer his baggage over and make a charge for it?

A. Yes, there is such an arrangement.

Q. And wasn't the Keeshin charge for that service higher than the Parmelee charge?

A. No, it is the same.

Q. Do you know that?

A. Yes.

Q. What was the Parmelee charge for that service?

A. 25 cents—no.

Q. No. Wasn't it true that Parmelee transported any number of pieces of baggage of any passenger who had a transfer coupon for the transfer coupon without any charge whether it had been checked through or not?

A. No. If you are talking about the transfer arrangement of sending it over to a parcel room of the outbound station.

Q. I am not talking about that.

A. Then I don't know what you are talking about.

903 Q. Listen to me, Mr. Nelson.

A. I am listening to you.

Q. All right. I am thinking only now—

A. Give a specific incident.

Q. A specific incident is a passenger who travels from New York on his way to Los Angeles. He takes a train from New York to Chicago. He has his bags in his Pullman compartment. He has the transfer coupon but he has not checked his baggage through. He gets to Chicago, and he decides that he is going to the Pump Room to have dinner or lunch in between trains, and he comes out to the transfer agency and says, "Here, take my bags across to the Santa Fe so I can go to Los Angeles and catch the train at 5:00 o'clock. Transfer them over here, and here is the coupon."

In that instance, did Parmelee transport that baggage for the transfer coupon and without any extra charge?

A. No, they made a charge for that.

Q. What charge did they make?

A. I don't recall whether it was 25 cents or 50 cents or what it was, and they also added into there the parcel room charge at the outbound station.

904 Q. What was the Keeshin charge? Was it higher or lower, or don't you know?

A. I don't recall what we are charging today.

Q. Let me give you a tariff that Mr. Keeshin filed, and maybe that will refresh your recollection.

By Mr. Freeman: I ask to have marked for the purpose of identification as Plaintiff's Exhibit No. 39 this document coded as A-452 and taken from the Chicago Terminal Lines files dated April 19, 1956.

(Thereupon the said document was marked Plaintiff's Exhibit No. 39 for identification.)

By Mr. Freeman:

Q. Look at Plaintiff's Exhibit No. 39 and see if it refreshes your recollection? Does it refresh your recollection, Mr. Nelson?

A. I had forgotten all about this, because there are no passengers taking advantage of it, because there are two other arrangements that are more advantageous to the passenger.

Q. Is there a charge made by Keeshin for this service which I have been describing?

A. Yes, here it is.

905 Q. And the charge is $1.20 plus tax for the first piece of baggage and fifty cents extra for each bag and seventy-five cents extra for each trunk, is that right?

A. That is right.

Q. Do you know what the comparable Parmelee charges were, if any?

A. No, I don't recall.

Q. All right; we will get to that.

By Mr. Thompson: I was waiting not to interrupt. All of this is certainly immaterial to what motivated the railroads or anybody else in 1955 in awarding the contract, and it is also immaterial as to whether or not the public interest is served because somebody charges more. As I remember it, you can't even get a good nickel cigar any more. It costs you fifteen cents, and that is not Mr. Parmelee's fault—I mean Parmelee's fault or Keeshin's fault. Those are economic conditions that have nothing to do with whether the public interest is being served or not.

By Mr. Freeman: I agree one hunred percent with Mr.

Thompson, but unfortunately your Honor has not so
906 directed us. I don't think this has anything to do with what motivated them, and I would like to go into those motivations, but you have asked us as part of our proof, to put in the difference in rates and service, and I am trying to do it. This is a substantial difference in rates that was in effect when Keeshin started his operation.

I agree that there are economic changes that have occurred, and we no longer can get a good five-cent cigar, and a dollar is only worth fifty-nine cents.

By The Court: Is this part of the contract?

By Mr. Freeman: No, it is not.

By The Court: Objection sustained.

By Mr. Thompson: That is what I was going to suggest when counsel finished, that this isn't covered by the contract. It is a side service.

By The Court: Objection sustained.

By Mr. Freeman: I have no question pending.

By Mr. Thompson: And the statement counsel
907 makes that there is a substantial difference is without any substantiation and proof up to this point.

By Mr. Freeman: If I do not prove it, I hope the jury will please disregard it.

By Mr. Owens: Your Honor, I would make a motion that all of this testimony be stricken because it is beyond the scope of the contracts that were being bid upon.

By Mr. Freeman: I am following Mr. Thompson's examination; that is all. There isn't anything that is relevant.

By Mr. Freeman:

Q. You had indicated, Mr. Nelson, that practically every year there were requests for increases in rates, and every year you were advised of our labor negotiations; is that your testimony?

A. Yes, sir.

Q. How long have you been with the Baltimore and Ohio Railroad?

A. How long have I been with them?

Q. Yes, in any capacity.

A. Thirty-nine years.

Q. That takes you back to some time in the twenties, does it?

908 A. It does.

Q. Do you know what the Parmelee rate was, let's say in 1927 before the depression?

A. I have no idea whatsoever.

Q. Wasn't the rate then 85 cents, Mr. Nelson?

By Mr. Thompson: If the Court please, objection.

By Mr. Freeman: I have a right to examine this witness, and I am examining him as an adverse witness, and I am asking him if I can refresh his recollection.

By The Court: How is it relevant as to what happened in 1927?

By Mr. Freeman: Your Honor, there was an attempt made by counsel to demonstrate that each year there were rate increases and each year there were frantic labor problems. I want to demonstrate that is a false impression; that from 1927 to 1955 the experiences were very conservative, as I will demonstrate.

By Mr. Thompson: If the Court please, this plaintiff wasn't even in existence in 1927. What some other company prior to this plaintiff was doing is altogether immaterial, surely.

909 By Mr. Freeman: Well now, your Honor—

By The Court: I will limit it to more recent years, 1950 to 1955, and strike everything out before that time.

By Mr. Freeman: Your Honor, I would just like to ask this witness this question:

By Mr. Freeman:

Q. How many rate increases did Parmelee secure in a period of thirty years from 1955, thirty years back? How many rate increases were there?

A. I have no idea.

Q. Wasn't it just three rate increases in thirty years?

A. You had that many in the last four years.

Q. Let's see if we did, Mr. Nelson.

A. All right.

Q. We had one rate increase in 1954, is that right?

A. You had more than one. You had $1.05 to $1.12½ to $1.20 to $1.22 in 1954.

Q. And that increase was negotiated in April of 1954, wasn't it?

A. That is right.

Q. With half of the increase made retroactive to January?

910 A. That is right.

Q. And a provision for an escalator on the wage thing which went up two cents?

A. Yes.

Q. Wasn't the entire agreement with respect to those three stages one agreement reached in May of 1954?

A. It was.

Q. So that is one incident which involved three changes. Now, when was the rate increase prior thereto?

A. And you went from $1.05 to $1.00.

Q. That was in 1952?

A. In 1952, yes, and then—

Q. From 85 cents to a dollar?

A. Yes.

Q. When was that?

A. That was in—

Q. 1948?

A. 1948, yes. Previous to that, wasn't it 75 cents?

Q. When was it 75 cents?

A. Previous to 1948.

By Mr. Thompson: That is right.

911 By Mr. Freeman:

Q. It went from 85 cents to $1.00 in 1948?

A. Yes, but previous to 85 cents, wasn't it 75 cents?

Q. Yes.

By Mr. Keating: I object to the witness asking questions of counsel.

By Mr. Freeman: I will tell you; yes, it was.

By Mr. Freeman:

Q. Wasn't it 85 cents previous to the 75 cents?

Well, Mr. Nelson, just to summarize it and not make this ludicrous, isn't it true that when you first came with this railroad, the transfer charge was 85 cents, that it was reduced during the depression to 75 cents and increased during the war to 85 cents, and aside from that change and the three changes that you have mentioned there have been no rate changes other than reductions in rates that Parmelee put in?

912 A. When you speak of my early railroading, I wasn't interested in this problem whatsoever, and I couldn't tell you what the rate was.

Q. I have exhausted your recollection, but let me now ask you with respect to the more current years that the judge has asked me to concentrate on. When the rate went from 85 cents to $1.00 and then from $1.00 to $1.05, was there a large amount of military traffic handled by the Parmelee Transportation Company in the form of furloughees or men in military service going to and from duty?

A. Yes, there was.

Q. Didn't Parmelee have a special rate for the transfer

of military servicemen, namely fifty cents, instead of whatever the rate for adults was?

A. That is right.

Q. And wasn't that rate put into effect at the time the rate increase for civilian traffic was put into effect, approximately?

A. We went to 85 cents for furloughees back in 1950. Previous to that it may have been fifty cents.

Q. It was 85 cents when the rate went up to $1.20, wasn't it?

A. Yes.

913 Q. Prior thereto it was 50 cents, isn't that true?

A. No.

Q. I will put the figures in, Mr. Nelson, so you won't have to rack your brains, but the fact of the matter is and the only fact I want to establish through you, because the other is speculative, the fact of the matter is that when these three different rate increases were put into effect, there was a rate reduction put into effect for military traffic?

A. There was a reduced rate for military traffic.

Q. Was military traffic a very substantial portion of the traffic that the railroads and that Parmelee handled during this period from 1945 to 1950?

By Mr. Keating: Objection. It calls for a conclusion.

By Mr. Freeman: If he knows.

By the Court: He may answer.

By Mr. Freeman:

Q. By substantial, I mean over 25 percent.

A. You are asking me for something I have no direct knowledge of.

Q. You don't know whether or not it was over 25 percent of the traffic?

A. No; I have no direct knowledge of that.

914 Q. All right; did you say that the railroads are competitors with each other?

A. That is right.

Q. And in some instances very tough competitors, aren't they?

A. That is right.

Q. At the time that Parmelee was rendering this service, were they ever rendering it on a cost-plus basis, or whatever their cost was, and they asked the railroads to give them a profit?

By Mr. Keating: I object to that. That is completely irrelevant. I don't think there is going to be any evidence that the present transfer is on any cost —

By the Court: Read the question.

(Thereupon the record was read as above recorded.)

By the Court: He may answer.

By the Witness:

A. If you mean by that that the Parmelee Company came to us each year and said they had to have additional, an additional increase in their coupon rate because of their increase in costs, that is the answer. Otherwise, I don't know —

915 By Mr. Freeman:

Q. No. I mean did Parmelee ever serve you on the basis of sending you a bill of what their costs were plus ten percent?

A. No, sir.

Q. So that using that example, is what I mean, Parmelee has never served the railroads on a cost-plus basis?

A. No.

Q. When you asked Mr. Markin or when any railroad representative would ask him for the direct costs of the Parmelee Transfer service, didn't Mr. Markin advise that the transfer operation was part of a consoli-

dated picture which made it very difficult for him to allocate costs?

A. Not only very difficult, but he said he wouldn't do it.

Q. But he did say it was on a consolidated basis which presented a difficulty, and therefore he wouldn't do it?

A. That is right.

916 By the Court: How much longer do you have with this witness?

By Mr. Freeman: Just another question or two.

By the Court: I would like to recess.

By Mr. Freeman: I think it would be nice if you would. It would give me a chance to review my notes.

By the Court: We will take a ten minute recess.

(Whereupon a recess was taken, after which the following further proceedings were had herein, in the presence and hearing of the jury:)

By the Court: Bring out the jury. You may proceed.

By Mr. Freeman:

Q. As I understand it, Mr. Nelson, you did participate in the negotiations in 1948 and then in 1951?

A. Not 1948.

Q. But in 1951?

A. Yes.

Q. Then let me confine my remarks to 1951. In 1951 was there also a six member railroad committee formed?

917 A. Yes, there was.

Q. Was the Baltimore and Ohio one of the members of that committee?

A. Yes, they were.

Q. And were you its representative on the committee?

A. I was.

Q. Did that committee interview various contractors

to determine whether or not they could get a transfer service at less than Parmelee's then proposal?

A. I don't think we interviewed them as a committee at that time in 1951.

Q. Tell me the procedure that you followed.

A. Well, as I recall, we had a meeting, and it was decided we would ask a number of contractors, trucking contractors, and, as I recall, the individuals of the committee contacted these contractors rather than the committee as a whole as we did in 1954.

Q. Did you prepare a report, the committee prepare a report of the results of its negotiations during 1951?

A. As I recall, they did.

By Mr. Freeman: I would like to have marked, for the purpose of identification, as Plaintiff's Exhibit 918 No. 40, this five-page document which I believe is the report of the committee dated June 22, 1951, and it happens to have a North Western code, North Western-211 to -215. These code references are merely the files that we took the papers out of.

(Thereupon said document was marked Plaintiff's Exhibit No. 40 for identification.)

By Mr. Freeman:

Q. Mr. Nelson, is this document that I have marked as Plaintiff's Exhibit No. 40, does this contain a report of this negotiating committee in 1951, together with a transmittal to the Chicago Terminal Lines by Mr. Padrick, and whoever was his — maybe it wasn't Mr. Padrick; let me see. Yes — by Mr. Arnold and Mr. Padrick to the Chicago Terminal Lines' committee?

A. Apparently it is.

Q. Did you participate in the preparation of this report?

A. May I read it?

Q. Certainly.

A. Yes, sir.

919 By Mr. Freeman: I offer in evidence Plaintiff's Exhibit No. 40.

By Mr. Thompson: I can't find the report.. All I can find is the letter of transmittal. Excuse me a minute, your Honor.

By the Court: That is all right.

By Mr. Freeman: Your Honor, it is similar to the progress report of —

By the Court: I am waiting to hear Judge Thompson express his views.

By Mr. Thompson: Well, it is full of a lot of hearsay statements, and so on, but I guess it is of the same general character as some of these other reports.

My objection to it now is that it is immaterial to this issue on trial, and it has no relation to that subject.

920 By the Court: I will look at it on that issue.

By Mr. Freeman: In that connection, before you starting reading that, of course, this is an attempt to examine the witness on the same subject that Mr. Thompson examined him on. It had to do with the increase in rates in 1951 and 1952. I am presenting to the witness the report that was made in that connection.

What could be more relevant to this examination?

By the Court: I will let it go in.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 40.)

By Mr. Freeman: I had forgotten to tell the Court, and I would like to tell the Court now, that Mr. McConnell has left in order to participate in an argument before the Illinois Supreme Court, which is some kind of a commemorative service at the University of Chicago, and he

will be unable to be here tomorrow morning as well,
921 but I will try to carry on so we will not lose any time.

By the Court: I would like to say to the lawyers, the Bar Association has a big affair tonight, and we will adjourn about a quarter to five because their dinner is at 5:15. Those of you who want to attend may do so. I have got to be there with the Federal Judges, and then we are going to the Chicago University to attend their dedication.

By Mr. Freeman: Yes. That is what my colleague is doing. I feel naked without him.

By the Court: So we will adjourn earlier. I suppose the jury doesn't like that.

By Mr. Freeman:

Q. Mr. Nelson, what is the Railway Express Agency?

By Mr. Thompson: If he knows.

By the Witness:

A. They handle—

By the Court: Pardon me. I have been told that
922 some of you folks live out in the suburbs. How many?

Then we will recess at 4:30.

By Mr. Freeman: I like that, too.

By Mr. Freeman:

Q. Mr. Nelson, in 1951 or during the period from 1950 to 1955, was the Railway Express Agency an agency that transported baggage and parcels and was owned by a group of railroads, some 68 in number?

A. I believe that is correct as far as the ownership.

Q. In other words, it was—

A. Handling of less-than-carload lots of baggage.

Q. But it was an organization owned by the railroads?

A. That is right.

By Mr. Thompson: If he knows.

By Mr. Freeman: Now I would like to read to the jury a part of this report of June 18, 1951, of this negotiating committee. It is addressed to Mr. Padrick.

"Dear Mr. Padrick:

"As chairman of the committee appointed by you (E.B.P. February 11, 1951) to study all phases of
923 the transfer of passengers and baggage, Chicago, I am privileged to make the following report, with recommendations —

"Committee members included — " And they just listed the names of the six committee members, including Mr. Nelson.

"That committee, in its initial session, analyzed the scope of the work to be performed and reviewed a list of the companies possessing the apparent ability to perform an over-all transfer service between stations, Chicago.

"The twelve months statement (July 1949 to June 1950, inclusive) itemized payments to Parmelee Transportation Company by Chicago Terminal Lines in the amount of $1,405,000,"

and they calculated the number of passengers and baggage.

924 "The magnitude of the work to be performed necessarily narrowed the field of capable organizations possessing the ability to perform the transfer service to the satisfaction of the passenger, the carriers, and the vehicle company.

"Accordingly, the committee issued an invitation to Parmelee Transportation Company, Chicago Gray Line, Inc., Railway Express Agency, to meet with the committee, in turn, and discuss.

"1. Transfer of passengers with baggage between stations.

"2. Transfer of checked baggage between stations.

"3. City pickup and delivery service.

"The Parmelee Transportation Company reaffirmed their ability to perform the service required and stip-

ulated the following additional purchase orders had been placed for equipment to be placed in the Chicago transfer service: 40 new baggage transfer trucks,
925 first deliveries made in March, 1951; 85 new limousines, first deliveries expected in September, 1951:

"and estimated present capital investment totaled over $500,000 within the City of Chicago, devoted to the transfer of passengers and baggage between railroad stations, plus a maximum of 250 drivers and 55 passenger agents.

"The Chicago Gray Lines, Inc. replied as follows—" and they quote a reply from the Chicago Gray Line, which I will omit.

"The Railway Express Agency (Walter Peese, vice-president, Chicago, April 7, 1951) replied as follows:

"'As stated to you at the time and from information given me as to figure this work is being presently performed by Parmelee, it could readily be seen the figure we would be in a position to quote would be so much in excess of what you are presently paying Parmelee that we could not compete with them.'

"Other organizations, for example Dixon, Willett,
926 taxi cabs, were analyzed and the committee determined that the transfer at Chicago is of such scope that it would be to the detriment of the carriers to designate a dual service wherein one organization would undertake to handle checked baggage and a second organization handle passengers.

"Recommendations: After reviewing the magnitude of the work to be performed, the committee feels that the work and method of the Parmelee Transportation Company continue desirable, and it is our recommendation that the transfer of passengers and baggage, Chicago, remain with the Parmelee Transportation Company as long as the rates and service continue

satisfactory to the terminal carrying lines, Chicago.

"Indications to the committee are reasonable that any stipulation beyond the charge of $1.00 for adults and 50 cents for children, covering added payments by the carriers to Parmelee Transportation Company, can be terminated as of June 30, 1951, therefore, it is our further recommendation that you, as acting chair-
927 man of the Chicago Terminal Lines, explore the necessity of Terminal Lines, Chicago, continuing the payments outlined in your letter to Mr. C. L. Passolt under date of November 29, 1950.

"Re Chicago Gray Line, Inc. proposition—the thinking of the committee favors present limousine type of service because of its flexibility. Notwithstanding, it is our recommendation that you, as active chairman of the Chicago Terminal Lines, should acknowledge to Mr. Harry J. Dooley that the conditions of transfer of passengers and baggage between stations in Chicago, as performed by the Parmelee Transportation Company today, being satisfactory, it is not our disposition to change the present methods of operation—likewise it is not our disposition to treat lightly his proposition and his proposition, as submitted, will be retained for future review should there be a material change in service or methods as presently performed."

It is signed by Sidney W. Bone, passenger traffic
928 manager.

By Mr. Freeman:

Q. Mr. Bone is with the New York Central?

A. Yes, sir.

Q. Mr. Nelson, is it true that the Railway Express Agency was solicted to bid on the transfer service in 1954-55?

A. It was.

Q. Did they submit a bid of cost plus fifteen percent?

A. That is right.

Q. And they were rejected?

A. That is right.

Q. Is it also true that in each instance where there was a rate increase involving Parmelee, that the Railway Express Agency was invited to come in and analyze the situation and submit a proposal?

A. Not in each instance, no.

Q. There is only one other instance in 1948. Do you know whether they were solicited then?

A. No.

Q. You do not?

A. No.

By Mr. Freeman: Thank you. I have no further questions of you, Mr. Nelson.

929 By Mr. Thompson: We have no further questions.

(Witness excused.)

By the Court: Call your next witness.

By Mr. Freeman: I think if you want to excuse the jury, I will take the remaining time in an offer of proof.

By the Court: All right. Good night and have a lot of fun. Don't discuss this case with anyone, not even with your husbands or wives.

By Mr. Freeman: As a matter of fact, your Honor, would the jury just wait a second? I would like to spend tomorrow morning making offers of proof while Mr. McConnell is not here.

By the Court: We will let them come in, in case you have a change of program.

Ten o'clock tomorrow morning, ladies and gentlemen.

(Whereupon out of the presence and hearing of the jury the following proceedings were had:)

By Mr. Thompson: I would just like to say that I appreciate that it is difficult perhaps for counsel for the plaintiff, sitting within three or four feet of the jury, 930 to confer at all without conveying it in such a fashion the jury will overhear it.

I overheard one of the remarks this afternoon, clear over in my seat, which is twice as far away as the jury is.

By Mr. Freeman: You don't have to say any more, Mr. Thompson. If I did do that, it was certainly inadvertence, and we will, if there is any conferring, it will be in the lightest whisper. We certainly understand what you suggest is entirely proper.

By the Court: I think that covers that with the jury and with counsel.

By Mr. Freeman: I did say something, but I was turning away from the jury, and maybe you heard it and they didn't, but in any event—

By Mr. Thompson: That is what I was going to suggest. One time Mr. Tone called my attention to a situation when I was up here, in which he said you were turned toward the jury, and he couldn't hear what you said but three of the jurors looked down to listen to that instead of paying attention to what I was saying. It is a matter we have to be very careful about, and I am not going to repeat the statement you made this afternoon—

By Mr. Freeman: We will change tables. Do you 931 want to change tables?

By Mr. Thompson: No. Don't try to make this funny. It is serious. If you have to go on, I will make a record of what you did say.

By Mr. Freeman: Go ahead. Make a record of what I did say, Mr. Thompson. I have no objection.

By Mr. Thompson: When the judge ruled Mr. Goldstein's letter out, you said to Mr. McConnell, heard across the room, "That is crazy."

By Mr. Freeman: I didn't say it was crazy, but I may have thought it.

By Mr. Tone: I heard Mr. Freeman say it was crazy, and I was sitting farther away than the jury.

By the Court: I heard it, too.

By Mr. Freeman: Then I said it was crazy.

By the Court: I said to the jury I am not impressed by those matters. I don't feel offended. It has no impression upon the jury and I want them to disregard everything. I don't want to get into a controversy with either side.

By Mr. Thompson: I am not talking about your Honor being offended. You can take all this you please, but I don't want the jury poisoned by it.

By the Court: I will try to impress them that I am not—

932 By Mr. Thompson: I didn't say anything about whether you were or not. It is the jury I am concerned about.

By Mr. Freeman: All right. I said the ruling was crazy. All right.

By the Court: I realize this: It is a very important piece of litigation, important to both sides, and counsel sometimes lose themselves in the heat of passion and say something a little too loud. You have got to be understanding of those matters.

By Mr. Freeman: You can understand my reaction to the ruling. It was an adverse ruling, and what I was saying was that I thought it was wrong. Of course I did.

933 By the Court: I don't blame you for thinking it is wrong. I don't blame either side for disagreeing with me. I am as anxious to make as good and clear a record as I think is proper for the Court of Appeals to review.

I want to say it now again, counsel has repeatedly asked me to keep out offers of proof. I am not going to do it for one reason, because they have not stipulated with you on that basis.

You have a right to contend, and with all the power at your command, that the conspiracy is part of the public injury that you are trying to establish. I don't believe it goes before the jury, but I think for the Court of Appeals, they should have it in the record so they will not say to me, when the thing is over, that I have deprived you of a full opportunity to present your views so that they may review it.

By Mr. Freeman: In addition, of course,—

By the Court: Now when it comes down to some isolated items of proof, like an accounting, for instance, that may not come within the same category because I don't believe that an accounting would even go before this jury. On the basis, that is my judgment—

By Mr. Freeman: I think it is in a different category, your Honor.

934 By the Court: Entirely different category, but whether or not the alleged proposed sale of the real estate is or isn't, counsel got up and made the objection to subpoenaeing a witness. I believe, and I want to be consistent with it, that an offer of proof for the record—

By Mr. Freeman: Is enough.

By the Court: Is going to impress the Court of Appeals with the completeness of the trial so they will not have anything withheld from them, and if they think I am basically wrong on the separation of issues, they will say that "You were wrong because this was proper proof." If I am right, they will say I excluded it properly.

By Mr. Thompson: If the Court please, two or three times, maybe more, it has been said that counsel for the

defendants declined to stipulate, therefore you are going to receive offers of proof.

By the Court: No; no, I am saying—

By Mr. Thompson: I don't know what it is we are supposed to stipulate to.

By Mr. Freeman: It is too late now, my God!

By Mr. Thompson: Keep still.

By the Court: I am saying most respectfully, only in this sense, Judge Thompson, and believe me, it is
935 respectfully, I don't know what you offered to stipulate or what you decline to stipulate except for one thing that I do know: That in the absence of a stipulation, the cases as I read them require the presenting of a witness to ask him some questions, and when I decline to let him answer, then they can proceed with the offer of proof.

By Mr. Thompson: There isn't any question about that. All of us agree with that.

By the Court: I am dealing very kindly when I say there is no stipulation, only because of my limitation on it, that is all.

By Mr. Thompson: But our point is that when the proof they offer is obviously immaterial to the whole case, or in this case where there is separation of issues, where it is obviously immaterial to the issue that is being tried, then there should be no offer of proof because we are completely helpless.

You keep saying that you want the Court of Appeals to have all this immaterial, damaging, prejudicial matter before them. Yet we are not ever going to be in a position to put proof in that meets these utterly extraneous offers of proof.

By the Court: How are they going to have it before them if I excluded it from the jury and I strike it from
936 the record?

By Mr. Thompson: Well, if there hasn't been enough in the last five days to show what your point is—

By the Court: That is right.

By Mr. Thompson: And to show whether you are fundamentally right or wrong, we can stay here until Christmas and we won't have the point made.

The point is now made. There is plenty of record here to decide the question on, and there simply is no purpose or point in going on for another week or two making the point which you want decided because it is already there, and I should think counsel on the other side would concede that it is already there.

937 By the Court: I wish they would, but if they don't I can't compel them. I say I do not compel you to try your case my way. I rule upon the evidence.

By Mr. Freeman: We are telling your Honor, however, that each day that we have proceeded here, we have eliminated witnesses, eliminated areas of proof. I feel that a few more days will complete our presentation.

By the Court: I will not even attempt to direct your course at this trial except by ruling upon evidence, or offers of proof.

By Mr. Owens: Your Honor, with respect to this ruling and limiting the scope of the evidence to certain issues, you talk in terms of the Court of Appeals having the benefit of this evidence.

Well, it shouldn't be in the record at all. Now if it is being tried, this case is being tried before a jury. The only thing the Court of Appeals should be interested in is what evidence is presented to that jury.

Now, if your Honor is wrong in excluding it, the fact that you exclude it puts you in error. Now you are in error excluding it from the jury, and there is no sense in encumbering the record with what you have excluded, and that is all we are doing.

938 By the Court: Except the Court will not know what I have excluded.

By Mr. Owens: It won't make any difference because the issue to be decided is an issue of fact before this jury, and when the court above decides whether you were right or wrong in excluding the evidence and denied the opportunity to present evidence, that is as far as it has to go.

By Mr. Freeman: Not at all.

By the Court: That is correct, except for one point. Counsel insists, and maybe they have a right to insist, that the offer of proof they are making is addressed to the question of public injury. That is where you and I differ.

By Mr. Owens: You have to determine what public injury is as far as you have limited this.

By the Court: I have not determined what public injury is.

By Mr. Freeman: Let me make one point emphatic while Mr. Owens is on his feet here before your Honor, a point that possibly has been slighted in a lot of this argument.

Of course, our primary position is that proof of conspiracy to restrain trade or monopolize trade and
939 commerce is part of the public injury as Congress and the Supreme Court has announced it.

In addition, however, in addition to the rates and service problem of public injury, we have alleged in our complaint that the ability of defendant Cross to perform his official duties in a fair, impartial and efficient manner was impaired, and the public and the Commission were substantially deprived of the value of defendant Cross' services. This we alleged as part of what happened as a result of this conspiracy.

My point is this —

By the Court: I see your point.

By Mr. Freeman: These defendants argued that that was not sufficient public injury. They recognize that this was part of the public injury.

By The Court: I am not going to elaborate on what I said. You have a right to allege that this is part of the public injury. I have a right to rule upon it, and the Court of Appeals or the Supreme Court has a right to say you were right or I was right, and I do not propose to tell you how to conduct your lawsuit.

By Mr. Freeman: All right. I will just—

By Mr. Thompson: Your Honor, while we are at this, and we have only enough time to survey a little of
940 the field rules, they have three or four witnesses subpoenaed, who are here for the sole and only purpose—and there cannot be any dispute between us about this—of testifying to these real estate transactions of Mr. Cross.

In other words, Mr. Kline is the person who bought the property out at Deerfield, and Mr. Wilbur, and some others are the people who handled the transaction when Mr. Cross bought his property. Then I don't know what they are going to do about these witnesses in Washington that handled the sale of the Cross property. That is neither here nor there—

941 By Mr. Freeman: We have the depositions.

By Mr. Thompson: I know you have taken their depositions, but as I say, they have this flock of witnesses, which it is perfectly obvious now, and there can't be any dispute about this, their depositions show and they will concede that they will testify to nothing whatever excepting the real estate transactions.

Your Honor has ruled that all the documentary evidence in respect to those transactions is excluded and immaterial.

By Mr. Freeman: So we will put in oral proof.

By Mr. Thompson: This record is awfully scratchy, and we get so much static that I don't get a chance to say what I want to.

The proof is clear as to what it is going to be. Now there can be nothing added by an offer of proof, to take a half a day to further encumber this record with an offer of proof.

It ought to be certainly stipulated between counsel that these witnesses testified in no other subject, and that is perfectly clear.

By the Court: I would be happy to do so, and I tell you now, and I tell Mr. Freeman, and he knows it—he is not even arguing any more—that I will exclude it from the record. We are only talking about his
942 right to offer proof.

By Mr. Thompson: He has no right to offer the proof.

By Mr. Freeman: Even your ruling, your Honor, of December 2, 1959, which excludes these documents, still allows us the opportunity to make an offer of proof with respect to them outside the presence of the jury, and that is all we are seeking to do.

By the Court: And that is where the difference of opinion is.

It is 4:30. Do you want to start?

By Mr. Freeman: I will start tomorrow morning.

By the Court: All right.

10:30 tomorrow morning, gentlemen.

(Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Friday, April 29, 1960, at 10:30 a.m.)

943 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Friday, April 29, 1960,
10.30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

944 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Rail-
road Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

945 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.

(And thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right. Is there anything before the jury comes out?

By Mr. Freeman: Yes, I think, your Honor, I would like to address you with respect to Exhibit 38, which was presented yesterday, and consists of a letter from Mr. Benjamin Goldstein as attorney for Railroad Transfer Service to the Mayor of the City of Chicago, and copies to the Corporation Counsel of the City of Chicago and the Chairman of the Committee on Local Transportation.

As I read the transcript and remember the discussion that occurred here, it seemed to me as though your Honor was excluding this on the ground that the contract was the best evidence.

946 By the Court: Was what?

By Mr. Freeman: Was the best evidence of what the arrangements were.

By the Court: Oh, no.

By Mr. Freeman: On what ground has it been excluded then?

By the Court: The contract being the best evidence does not apply where a lawyer's opinion interpreting the contract was subsequent to the consummation of the transaction.

By Mr. Freeman: Let me address myself to those remarks, if I may, and bring to your attention some additional information.

First, this statement by the lawyer as a representative of Keeshin is an admission against interest because it takes a position then which is in conflict with the position which the Keeshin attorneys take now in this trial.

It does not interpret a contract because the material that is set forth here, paragraph 3 of this letter, which is the only portion that I would want to bring to the attention of the jury, that paragraph deals with service that is not covered by the contract. This is something that

cannot be found in the contract.

947 The contract itself has not as yet been put in evidence. Ultimately it will. But the agreement, the contract between these railroads and Keeshin, can be read, and none of this material can be found in any respect. There is no indirect reference to this material in the contract. It is absent from the contract.

948 Secondly, your Honor, there is an attempt at comparison between two services, the Parmelee service and the Keeshin service.

The Parmelee service is not covered by formal contract. There is no formal contract anywhere to be found that determines the Parmelee service to which Mr. Goldstein refers.

This service was rendered pursuant to custom and understanding and long usage over many, many years, and it is established that way, plus possibly written memoranda, but I know of none. I know of no writing which deals with the phases of Parmelee service to which counsel here refers.

Thirdly, your Honor, there has been a great deal of attention given to your pretrial rulings, and I suppose your Honor feels that considerable consideration was given to the admissibility of these documents.

Now we specifically listed this Goldstein letter as Item 48, and it was listed separate and apart as one single item, this letter from Mr. Goldstein to the Mayor dated September 24, 1955.

Counsel raised objection to our offer of that letter and pointed out that it was irrelevant and hearsay,

949 the same objections that are made here, and your Honor on Page 6 of your memorandum handed to us says, with respect to Item 48, "Letter Mr. Goldstein to Mayor Daley, dated September 24, 1955, objection overruled."

I feel that in view of the fact that you have taken this position in overruling their objection and holding that this letter is admissible that I should call it to your attention forcibly.

I do feel that the letter is admissible. It bears specifically on the narrow issue that you have forced us to go to trial on. It is an admission in several respects, your Honor.

There is no place—we may be able to establish by other means that there were differences in service, but there is no place other than this communication that we can establish that two of these defendants felt that this difference was a very significant difference.

The representation is made to the Mayor of the City of Chicago, with copies to the principal officers of the City of Chicago. It is made as a representation to the public of the public's interest in this service. It is precisely and exactly the issue that your Honor has asked us to submit to the jury.

950 You have already ruled that this document is admissible, and I believe our discussion yesterday, or in our discussion yesterday, I may have been at fault or your Honor's ruling may have been precipitous, but I felt that your Honor was ruling on the basis of this interpreting a contract, and it does not.

951 This paragraph 3 describes services that are not going to be made available, a description cannot be found in any agreement, cannot be found in any contract as against services that Parmelee rendered, again a description of services that cannot be found anywhere."

You don't have here an interpretation of a contract, but besides, your Honor, we have authority, and it is good authority, that the fact an opinion is rendered by opposing parties in an admission does not matter. It

still becomes an admission of that opinion or that interpretation, and I don't think Mr. Thompson will quarrel with the scope and breadth of the admission against interest rule in so far as this concerns and encompasses an opinion or interpretation.

If I may summarize on this point, and I regard it as very, very vital, your Honor; I regard this ruling on this particular document as so basically in error as made yesterday and so right as made before, so basically in error that you have limited and restricted the issues, and this goes strictly to that point.

We find first the letter does not describe or interpret a contract. It deals with and describes services that
952 Parmelee renders, and you can find no description in writing of that service anywhere that I know of.

Secondly, it describes services that will not be rendered by Keeshin and the Railroad Transfer Service, and here again you can find nowhere, you can find it nowhere in the contract.

The contract will be presented when Mr. Keeshin takes the stand. We will put it in evidence. I will present it to you now if you like. There is nothing in this contract that is being interpreted by Mr. Goldstein.

There are no paragraphs, here are no sentences, there are no references. This is what Mr. Goldstein says, "We are not going to do."

It is the same as saying, "We have an agreement to render a transfer service, but we are not going to go to Los Angeles."

The fact that he says, "We are not going to go to Los Angeles" is not an interpretation of the contract. It is a statement of fact. "These are things we are not going to do."

Thirdly, there are very important admissions against interest. Fundamental in the proof of a case of this

kind or any kind is the fact that the defendants, or
953 the opposite parties, from time to time will present their position in writing, and if they take a contrary position at the trial, that previous admission becomes very, very pertinent in determining what is the truth.

One other thing, your Honor. We are seeking here reluctantly and against our fundamental position, but we are seeking here nevertheless to meet your Honor's limited and restricted direction to us with respect to the public injury issue, and a comparison of these services rate-wise and services necessarily will lie at the bottom of what your Honor has suggested, as I understand your statements.

We are seeking to make that comparison by this document. In the examination of Mr. Gurley, for example, on pages 633 and 634, Mr. Thompson said to Mr. Gurley:

"Will you compare an incident of this service between Parmelee and Keeshin?"

Objection was made, and the objection was overruled, and Mr. Gurley was being permitted to make a self-serving statement, not an admission against interest.

Here was a biased person, necessarily biased. I don't mean that this is a reflection against him but he
954 was interested in the defendants' side of this case, and he was permitted to render an opinion as to a comparison between these services, so how can you possibly withhold from the jury this further comparison of these services which are made by defendants, which are prejudicial to the position they now take, which is contrary to the position they now take, which is an admission against interest fundamentally and basically and which your Honor has already held on December 2, 1959, and then on March 10, 1960, that this document is admis-

sible?

955 We would like to re-offer it, and we would like to present it to the jury.

By the Court: Do you want to answer that?

By Mr. Meserow: May I just say this, your Honor, in the absence of the presence of the jury, that I think Mr. Freeman is merely trying to show by this letter that the Parmelee service, by Paragraph 3, used to once in a while, if a passenger wanted to stop at a hotel in the Loop or a department store, that they would drop them off.

The Keeshin people, the Railroad Transfer, does not do that. We are confined by our contract. The purpose of Mr. Goldstein in sending this letter to the Mayor was this, that on July 26—

By Mr. Freeman: Objection to the purpose.

By the Court: Objection sustained for the purpose beyond the letter. The letter speaks for itself.

By Mr. Meserow: If he wants to prove what the service of Parmelee is, he has all his Parmelee people here, and Mr. Scheeder can testify what he did.

If he wants to prove Keeshin didn't do it, he will have Keeshin as a witness, and he can ask him that.

He doesn't need the letter, and I am trying to state the purpose, in the absence of the jury, of this

956 letter.

Three days after the contract was given to Mr. Keeshin by the railroads, the City Council passed an ordinance—

By Mr. Freeman: Your Honor—

By Mr. Meserow: I am trying to give the reason for this letter.

By Mr. Freeman: I understand that you are.

By Mr. Meserow: And you are interrupting.

By the Court: I will sustain the objection to the document on the basis I outlined yesterday. It is not admissible

as a subsequent statement by a counsel, and it still interprets the contract as to what he thinks under the contract ought to or ought not to be done.

That can be proven by competent evidence, and it will be sustained.

By Mr. Freeman: Your Honor, we would offer to prove in this record that Mr. Goldstein, as attorney for and representative of the Railroad Transfer Service, Inc., on September 24, 1955, addressed a public communication to the Mayor of the City of Chicago and to the corporation counsel and chairman of the committee on local transportation, in which he said:

957 "Under the new service . . . "

And I interpolate, to be rendered by Railroad Transfer Service, Inc., commencing October 1.

". . . the coupon holder will no longer be allowed to use his coupon to procure at the expense of the railroads a free ride for himself with his accompanying hand baggage to a hotel, residence, business or office building in the Loop of Chicago, in the nature of local taxicab service, now possible under the existing Parmelee Transfer Service arrangement with the railroads. Nor will the passenger motor vehicles of Railroad Transfer Service, Inc., used in the new service accept non-coupon holders as cash fare passengers for transport between stations or from stations to a hotel or other terminus in the Loop of Chicago, in the nature of local taxicab service, as the passenger vehicles now used in the Parmelee transfer service now do.

"This wide cleavage between the limited new station-to-station transfer service and the present inter-
958 station and Loop terminus Parmelee transfer service, and the wide cleavage between the limited public

utility uses to which the passenger vehicles of Railroad Transfer Service, Inc., will be devoted exclusively and the additional local passenger transportation uses to which the passenger vehicles of the Parmelee transfer service are now devoted in part, is not generally understood in the public mind and among governmental authorities having jurisdiction thereover or concerned therewith.

"For these reasons, is it appropriate at this time to bring the above information to your attention, to make clear the specifications of the new service and to set out the precise use of the passenger vehicles of Railroad Transfer Servicee, Inc., therein, in conformity with applicable Federal, state and municipal laws."

959 That is the end of my offer. I assume from what Mr. Meserow says that we will be permitted to interrogate Mr. Keeshin on this subject.

By Mr. Meserow: I don't agree to that.

By Mr. Freeman: I thought he made that statement.

By the Court: I will rule upon the evidence as it is presented, and I will rule upon the objections. I don't care what his statement is.

By Mr. Meserow: I am not the judge here.

By the Court: If it has any propriety with respect to the service and the relationship, of course you can inquire.

By Mr. Freeman: Your Honor, may I, with all deference, inquire whether or not this memorandum that was entered by you on December 6 has any significance or shall it be completely ignored?

It seems to be, your Honor, that you are willing to ignore those instances, and I will point out another one to your Honor where you have ruled that documents are admissible, but at any time I seek to present a document

that you have ruled inadmissible, there is a waving of arms on my learned counsels' side, and an immediate denial.

I think, your Honor, that if there is to be a reconsideration of this memorandum, it should be reconsidered
960 for both sides and not for one side, and let me just in this connection point out that you have during the course of this trial rejected the Soo Line exhibits, which are exhibits, Plaintiff's Exhibit 11, 12 and 13.

These three documents were submitted in our list of documents that we intended to offer as Item 43, and there was an objection made by the defendant railroads joined in by counsel for the other defendants, that these documents were internal documents, immaterial and hearsay, and on page 9 of this memorandum of opinion that you rendered on December 2, 1959, on page 5, rather, those objections are overruled.

The Soo Line memoranda are to be considered admissible there, and your Honor has changed his ruling again, and it occurs to me, and I say it again with all due deference, that no favorable ruling that we have gotten in the past from you will stick, but every unfavorable ruling will be reiterated, and I don't think that is a fair trial.

By the Court: It is difficult to try a case here with the attitude and the inferences and the aspersions cast upon the Court by lawyers, both before the jury and away from the jury, and the record is clear.

961 I am ruling on the record, never off the record. I don't have to explain why I am ruling, but if you want me to, I will put it on the record.

962 By Mr. Freeman: I would like an explanation, sir.

By the Court: The Soo Line is not a party to the proceeding. As I recall, if I am talking about the same docu-

ment, it is not binding on anybody, and I have explained that.

I am ruling upon this document, not because it is not an admission against interest, but because it was given after the consummation of the contract, and merely constitutes a lawyer's opinion.

I don't want to spend any more time. Those are the rulings and I don't care to go over them again, and I don't want to be bickering with the lawyers—

By Mr. Freeman: I don't mean to be bickering, but I want to point out—

By the Court: If I am unfair, the record shows it, and the Court will review it. If I am fair, so will the Court review it.

Now, call the jury.

By Mr. Freeman: I will call Mr. Wilbur, please.

By Mr. Thompson: If the Court please,—

By the Court: Wait a minute before you call the jury.

By Mr. Thompson: This is the witness that I mentioned yesterday afternoon. Mr. Wilbur, as I recall it, is one of the real estate salesmen of the Baird and 963 Warner Company, and is the salesman who handled the transaction which occurred in the summer of 1955 when Mr. Cross purchased the Deerfield property for members of his family. So the deposition shows.

of 1955 when Mr. Cross purchased the Deerfield property for members of his family. So the deposition shows.

Now this is all perfectly clear from the deposition, and so also is the matter of other real estate dealings of Mr. Cross clear from the depositions. They deal with no other subject.

The Court can rule now as well as at any time on these questions without having brought to the jury's attention that he is a real estate agent, and then have

some other questions asked which obviously will be to convey to the jury that this transaction took place.

The defendants, of course, when the Court sustained the objection, are not permitted in the orderly trial of a lawsuit to put on evidence to meet evidence which the Court has rejected. Now the Court reviewed these things in the pretrial hearings. They were fully discussed, and the Court ruled specifically that none of this evidence respecting real estate transactions of Mr. Cross will be received, and obviously they have nothing to do with whether or not the public interests were affected because they go only, and that is a very remote sense, to issues which
964 are not before this jury.

We have had so much of this going on before this jury that we are almost driven to the point of challenging the hearing of the case by the jury. In other words, we are almost driven by the conduct of counsel to move for a mistrial, and I have a feeling that the course of conduct is directed purposely to requiring us or forcing us almost to move for a mistrial.

965 Now Wigmore says, in his Volume VI, Third Edition, Section 1808:

"The general principle that a counsel may not make assertions of fact concerning matters not otherwise properly put in evidence may be sought to be violated by indirection, but the prohibition applies with equal strictness. There are two chief ways in which this may occur: First, in a preliminary statement to the judge as to the tenor of evidence which the counsel desires to offer; and, secondly, in putting the questions to witnesses.

"Where a certain class of evidence is desired to be offered, and the offering counsel knows either from the very nature of the evidence or from objection made by the opponent at the inception of the offer

or upon a previous analogous offer that its admission will be disputed, and therefore that a judicial ruling will be necessary, a sense of professional honor will tell him that in the ordinary case the details of the offer should not be stated in the jury's hearing be-
966 cause of the possibility that the statement may be taken by them as true and relevant even though it is excluded by the judge.

"In this respect, the rule of law enforces the standard of honor and requires the offering counsel either to present the offer in writing without reading it aloud to the court and the opposing counsel, or, if argument is expected, to afford an opportunity for the jury's retirement before orally stating the offer.

"No doubt much must depend upon the circumstances of each case and the discretion of the court should control, but it is clear that the judge should interfere ex mero motu, and that so far as feasible no statement of proposed evidence should be allowed to be made in such a way as to allow the jury to obtain an impression of its truth and relevancy and to place the opposing counsel at the disadvantage of objecting to proposals whose known tenor may
967 be misused against his party.

"The same general principle governs the putting of questions to witnesses. The jury may under certain circumstances obtain an impression from the mere putting of illegal questions, which are either answered in the negative or not answered because illegal and excluded, that there is some basis of truth to the question.

"When a counsel puts such a question, believing that it will be excluded for illegality or will be negatived, and also having no reason to believe that there

is a foundation of truth for it, he violates professional honor. It is generally agreed that where the counsel has been warned by a prior successful objection of the opponent to similar evidence that it is illegal, he will be prevented from again putting questions dealing with the class of facts affected by the same illegality,"

and so on.

968 In other words, the whole tenor of the article is exactly what all lawyers that have ever tried lawsuits know is true, that the mere asking of these questions and making assertions in the presence of the jury—obviously this jury is like all other human beings. Its curiosity gets aroused, and it gets to the point where they are saying in their own minds, well, these lawyers who are objecting are seeking to keep us from some very juicy evidence, and they get the impression eventually that the court is barring us from hearing what is continually asserted before us by the other side is competent and material evidence on the point before the Court.

Now we are getting into a situation here where it is utterly impossible for this jury to sort this out. I don't know how we can ever argue this case to the jury and keep it sorted out in our own minds, and your Honor is going to have difficulty in a way in sorting it out and instructing them. I know you will instruct them emphatically, as you should, that all of this should not be considered by them, but there comes a point where it is beyond human ability and particularly laymen who are only occasionally in court, to know what this is.

969 Now, of course, all the rules of modern practice have been designed to prevent treating a lawsuit as a game, and therefore pulling fancy tricks, and so on, before a jury, and that is why we have pretrial conferences.

That was the very purpose of having these pretrial hearings, which were rather extensive. We had them before Judge Robson all day, and your Honor had the transcript of that hearing and read it, as your Honor announced to all of us, and then you had hearings yourself os two different and separate occasions.

Of course, the rulings are utterly meaningless so far as the defendants are concerned unless they are observed because the mere fact that you ask questions about these real estate transactions brings to the jury's attention that there were real estate transactions, and it seems so obvious that these transactions are immaterial to the issue the Court has carved out of this case that there oughtn't to be any debate about it.

I should think that if we were trying the whole case that all of this would be properly excluded because, even
970 though in some remote sense, it might be logically argued that it has some relevancy to some issue in the case, it is a collateral issue obviously, and under the well established rule that mere relevancy doesn't always admit evidence, and that this is the kind of evidence that ought to be excluded because it does bring in a collateral and diverting issue.

In other words, the jury is going to be put in the position, as the record now shows, by virtue of the depositions taken before trial and as has been represented to your Honor, there is going to be put in issue whether Mr. Cross bought this property in Deerfield for an improper purpose.

There can't be any contention, it seems to me, by any evidence that has been produced or any that we know about, that any one of these defendants other than Mr. Cross had any knowledge of this transaction, much less had any part in it.

971 So the issue to be submitted to the jury on this evidence that is now being tendered would be did Mr. Cross buy this property for some purpose that is improper, or did he buy it for the purpose for which he said he bought it? In other words, a man has got a right to buy a home here for his daughter, if that is the truth about it. But whether it is, all the jury is going to be able to try there is the issue of whether or not this property was *properly and legitimately bought, and* it will only be an issue in which Mr. Cross is involved.

The implications from it, of course, are nothing but a substantiation of their suspicion and theory, that it was bought for the purpose of coming here and taking a position with Mr. Keeshin in the transportation field. Whereas the testimony, as appeared in the pre-trial depositions, which are all filed here in court and available to the Court's inspection, Mr. Keeshin emphatically denied that there was any such arrangement, and Mr. Cross emphatically denied that there was any such arrangement, and there is nothing to support it except their suspicions, and then bringing in these collateral issues which, by innuendo, will be drawn upon.

I might as well address myself to what will be the
972 proffered testimony of Mr. Kline.

Mr. Kline was at one time, at the time. I guess, of the transaction in question, an employee of the Pennsylvania Railroad Company. He had been an employee of that company for many years, and is now retired by virtue of age.

Mr. Kline and his wife, so the undisputed evidence shows, in the spring of 1956 were looking for a piece of property, and they had a real estate agent looking for it, and found this property up in Deerfield. Mrs. Kline liked it, and she looked at the property, and after

loking at it, she decided to buy it, and they took cash out of the Oak Park Bank and paid for it immediately.

Well, of course, you can understand that that collateral issue will be tried to the jury as the whether or not that was a plain, every day, ordinary transaction, and the suspicion and innuendo that will be drawn from it is that the Pennsylvania Railroad arranged with Mr. Kline to bail Mr. Cross out of a difficult situation when he got caught, as they will argue.

Of course, that sort of thing is the kind of thing that is utterly impossible for us to meet. We can bring the proof, and prove to a point of conclusiveness, it seems
973 to me, that there is absolutely nothing to this Kline transaction which wasn't an every day transaction, and which wasn't a situation that might occur at any time. Certainly all these other defendants will be so highly prejudiced by that situation, including the Pennsylvania Railroad, that you never can erase the suspicion and innuendo out of their minds.

Now I direct attention particularly to the fact that this transaction in all its parts took place in months following the institution of this lawsuit, after the whole thing was a matter of public record, and certainly—

By the Court: The Court is very familiar with that transcript, and I have examined it.

By Mr. Thompson: I should think so.

974 By the Court: I have known all about it. I don't want to interrupt you, Judge Thompson, but I will say to you now that if this case were tried on all the issues, I cannot agree with you that the testimony would not have to go in because it would have a definite tendency towards the alleged conspiracy, if any, and that any subsequent acts may be admissible, in my judgment. But that is not the point.

I agree with you, Judge Thompson, that the court's

patience has been taxed almost by both sides on my rulings because I have had to rehash them and review them. I have followed these arguments of counsel on my invoking of my rule. I have invoked it in the face of opposition from all the parties, without any exception.

I will admit, and I agree, and I resent the type of questions that have been asked where the answers have been included in the questions. I will deal with the jury when I get to it, and I want to tell you now that I have much more confidence in the intelligence and reaction of juries than as expressed by counsel around the table. I have been with them for twenty-seven years. I have lived with them, and they have far more intelligence than the courts and counsel believe, and that is the 975 great system that we have.

They sometimes resent that type of attitude towards the court or towards opposition counsel, more so than they imbibe the so-called undertones and reflections and aspersions and belligerence toward the Court. If they don't think I am trying to conduct an honest, fair trial here, that is my trouble, not yours.

I have ruled repeatedly, and again I say with due consideration to your table, counsel has offered to stipulate without any witnesses to make offers of proof, without the jury, without requiring a witness to be on the stand. That was rejected.

I am not criticizing you. You have your own reasons for rejecting it. You have a right to reject it. But you have put me in a position now where I can't say to counsel I know what you are going to do, and you can't do it. You have got to put a witness on the stand so that the first question he asks, when he hits that territory or that area, I am going to say stop it, you can't go on with it.

Now I can't blow hot and cold in this case. I can't blow

hot and cold or the plaintiff or the defendants. I am trying to conduct a lawsuit as fairly and as legally and
976 as lawfully as I know how, so that when it gets before the Court of Appeals, I will not be told that how did you know when you excluded this offer of proof after the introduction of a witness and the asking of one question?

I am not worrying about what the jury might get. I admonished counsel again and again not to incorporate in his question what he wants the witness to answer. I followed it. I know it, and I haven't had it before in this kind of volume of repetition.

I have had insults. I have had abuse. I am going to deal with it when the proper time comes. But I cannot anticipate what counsel will do or what questions he will ask, and I don't propose to repeat and rehash the rulings I have made upon the admissibility of documents or the admissibility of evidence because I think I am familiar with the case, I have read the briefs, I have read the pleadings, I have heard the objections, I follow it, and I rule upon them. I don't dilly-dally about them.

I make a specific ruling, either sustain it or overrule it. There is no such thing as let it go in for what it is worth. There isn't one single time I have said that.

I have ruled, and I have stricken it, and I will
977 deal with the jury when the proper time comes by instructions. I am not worried about going off on a tangent on something that is not in the record.

Now, bring in the jury.

By Mr. Freeman: Just one word. I deeply appreciate your Honor's attitude, and I should suggest that in most respects that what you have said is perfectly proper and perfectly understandable. But I do feel that your attitude with respect to our questions has not been a matter of reiteration, and that we have in all good faith from

the beginning said to you and said to counsel, give us the first twelve men for a jury—

By the Court: I have said that.

By Mr. Freeman: (Continuing) —excuse them, and we will make an offer of proof, reject it and we are willing—

By the Court: I have just said that.

By Mr. Freeman: All right. Lacking that, and at this stage of the game we can no longer make such a demonstration, we have asked proper questions. We sincerely regard them as proper.

Now your Honor, when we are examining an adverse witness—

By the Court: Except for one thing. I have ruled
978 on several or many occasions not to answer the question, and you went right ahead and said isn't that a fact that such-and-such happened, in direct violation and challenge of that ruling, and that is what Wigmore says is unbecoming in the proper practices in the courts.

By Mr. Freeman: Your Honor, when we are dealing with an adverse witness, we are permitted to ask a leading question.

By the Court: Not when the Court says you are in the wrong area. Sure, you are, on the proper subject, and if you ask a question that isn't it a fact that your price was twenty-five cents or twenty-three cents or twenty-one cents, I have never stopped you. But when I said you could make your offer of proof, you proceeded to ask isn't it a fact, and I know the record is replete with it, and that is what I am talking about.

Call the jury.

979 By Mr. Thompson: If the Court please, may I make just one suggestion? This is not argument. We are having too much of it already.

By the Court: I don't mind argument.

By Mr. Thompson: I appreciate you don't, but time is of some value.

I suppose or suggest that they call this witness to the witness stand and ask the questions they need to ask to lay the foundation, and if any part of the examination out of the presence of the jury indicates that it does have relation to this question, then the Court can rule, and the matter can be repeated in the presence of the jury.

By the Court: I overlooked one thing. I meant to say to you, Judge Thompson, if you have any desire to make any motions for mistrial, I don't want to encourage it or discourage it, as that is part of your practice and your duty, but I will pass upon it in due time. I am not going to comment beyond that.

As far as this is concerned, Mr. Freeman, am I to understand that the witness you are now calling will testify to nothing else than what is in the depositions?

By Mr. Freeman: No, that is not so. There is one document, your Honor.

980 By the Court: Send for the jury.

That is what I can't anticipate, and I don't want to do it.

By Mr. Freeman: It is one document we got from the witness subsequently.

By the Court: Send for the jury.

(The following further proceedings were thereupon had, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. We have been working, so you will pardon us for delaying your being called out.

I want to ask you one question, ladies and gentlemen of the jury: Yesterday in the trial of this case, did any of you hear a disparaging or insulting remark made by counsel to an associate with respect to the Court's ruling of the admissibility of evidence? If you did, I want you, with all the sincerity in my heart and with all the decency of my soul, to disregard it.

I cannot afford to have anything creep into this case that is prejudicial one way or the other, either to the Court or to counsel, because I am to deal with it and not you folks. You must not be influenced, and again
981 I am going to tell you, by anything that is being done here outside of the legitimate admissible proper testimony from the witness stand, and when the Court rules that the question is improper, any intonations, any inferences from the form of the question do not change the Court's attitude and does not widen your latitude. Is that clear?

We are determined here only to pass upon the evidence from the witness stand or from the proper depositions nothing else. Attitudes of lawyers, belligerance to the Court or to each other, doesn't make any difference. That is my problem, not yours.

I just want you to keep faith with me, and I am sure you will, that when the final times comes you will decide upon that as I instruct you. Is that clear?

All right; proceed.

982 By Mr. Freeman: Mr. Wilbur is hard of hearing, and if he doesn't get the question, it is because of that.

ALBERT A. WILBUR, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and address?

A. Albert A. Wilbur, Baird and Warner, 215 North Dearborn Street, Chicago.

Q. What occupation are you in?

A. Real estate.

Q. Were you in the real estate business in 1955?

A. Yes, sir.

Q. In 1955, Mr. Wilbur, were you engaged by Mr. Hugh Cross with respect to a real estate transaction?

By Mr. Meserow: Objection.

By Mr. Owens: Objection.

By the Court: Objection sustained, and I forbid you to answer, and I forbid you to go along with further questions along that line.

By Mr. Freeman:

983 Q. Mr. Wilbur, will you tell us what occurred in 1955 with respect to a property in Deerfield, Illinois?

By Mr. Meserow: Objection.

By the Court: Objection sustained. Don't answer. It is an improper question and beyond the scope of this issue.

By Mr. Freeman: I ask to have marked, for the purpose of identification as Plaintiff's Exhibit No. 41, a letter dated July 19, 1955.

By the Court: If it pertains to this issue, it is excluded. I am asking you on your word to so say to me.

By Mr. Freeman: Of course, it pertains to this issue.

By the Court: I have no objection to him marking it.

By Mr. Freeman: And having him just identify the letter.

By the Court: All right.

(Thereupon the said document was marked Plaintiff's Exhibit 41, for identification.)

984 By Mr. Freeman:

Q. Mr. Wilbur, I show you the letter marked Plaintiff's Exhibit No. 41 for identification, and I ask you whether you wrote this letter on or about July 19?

By Mr. Owens: Your Honor, I am objecting to any question being asked on this document.

By the Court: He may answer if he signed it, for identification, and we will handle it from there on.

The objection is overruled on that.

By the Witness:

A. Yes, sir, I wrote that letter.

By Mr. Freeman:

Q. And to whom was the letter addressed?

By Mr. Meserow: Objection.

By Mr. Owens: Objection.

By the Court: Objection sustained. It speaks for itself. It is identified, and you can't interrogate about it, unless it doesn't have a name on it, but it speaks for itself.

By Mr. Freeman:

985 Q. Mr. Wilbur, were you acting pursuant to instructions as a real estate broker when you prepared this latter?

By the Court: The objection will be sustained.

By Mr. Meserow: Objection.

By the Court: You can't interrogate along these lines.

By Mr. Freeman: I offer in evidence Exhibit No. 41.

By Mr. Freeman:

Q. First, did you, in fact, mail the letter, Mr. Wilbur?

A. I don't know that. I expect so.

By Mr. Owens: Objection to what he excepts.

By Mr. Freeman: I offer in evidence Plaintiff's Exhibit No. 41.

By Mr. Owens: Objection.

By the Court: Objection sustained.

By Mr. Thompson: And I move to strike the answer of the answer of the witness that he suspects he mailed it.

By the Court: It may be stricken.

By Mr. Freeman: I also would have marked for
986 the purpose of identification as Plaintiff's Exhibit No. 42, this letter by Mr. Wilbur to Mr. Diver dated November 14, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit No. 42, for identification.)

By Mr. Thompson: We move to strike the part of the inquiry which reads from the document, the addressee and the writer of the letter. He has the right to ask the witness whether or not he signed the letter, but we object to any content of the document being indicated by the question, and move to strike it.

By Mr. Freeman: I asked a perfectly proper question, your Honor.

By the Court: Read it.

(Thereupon the record was read as above recorded.)

By Mr. Thompson: He hasn't asked him anything yet.

By Mr. Freeman: I was just marking it.

987 By Mr. Freeman:

Q. Mr. Wilbur, did you prepare this letter, and does it bear your signature?

A. Yes, sir.

Q. And was this letter prepared pursuant to instructions that you had received?

By Mr. Thompson: Objection.

By the Court: Objection sustained, and the question may be stricken, and he is ordered not to answer.

By Mr. Freeman:

Q. May I ask you, Mr. Wilbur, whether in these transactions you were acting as a representative of some individual?

By Mr. Owens: Objection.

By the Court: Objection sustained, and he doesn't have to answer.

By Mr. Freeman: I want to establish a status.

By the Court: It has no bearing on this issue before me.

By Mr. Freeman: I see.

By the Court: And that is the ruling of the Court.

988 By Mr. Freeman:

Q. Mr. Wilbur, I show you a document—

By Mr. Freeman: Which I will have marked, for the purpose of identification, as—a memorandum dated November 16, 1955—which I will mark an Plaintiff's Exhibit No. 43, for identification.

(Thereupon said document was marked Plaintiff's Exhibit No. 43 for identification.)

By Mr. Freeman:

Q. (Continuing) —and I ask you to read this document and see if it refreshes your recollection with respect to a conversation that you had on or about that date.

By the Court: Answer it just "Yes" or "No" and not the substance.

By Mr. Freeman: I don't know whether he hears me or not.

By the Court: I don't either, but the answer is "Yes" or "No." I don't want any substance of it.

By Mr. Thompson: He heard you. I am having an awful time looking through you, Mr. Freeman.

989 By the Witness: What is the question?

By Mr. Freeman:

Q. The question is, Mr. Wilbur, does this document refresh your recollection with respect to a conversation that you had on or about that day with Mr. Diver?

A. Yes, sir.

By Mr. Freeman: I will ask to have this marked, for the purpose of identification, as Plaintiff's Exhibit No. 44.

(Thereupon said document was marked Plaintiff's Exhibit No. 44 for identification.)

By Mr. Freeman:

Q. Does this document, Plaintiff's Exhibit No. 43, correctly set forth the substance of that conversation?

By Mr. Owens: Objection.

By Mr. Freeman: I am not asking him for the substance. I want him just to identify it.

By the Court: He may answer "Yes" or "No."

By Mr. Freeman:

Q. Does it?

By Mr. Owens: I am objecting further, your Honor,

990 as the question posed to him was with respect to another individual who is not a party to this case.

By the Court: He may answer "Yes" or "No." I am not going to let any part of that conversation go in or any corrections on it or anything else. He may answer "Yes" or "No," does it reflect the true conversation. That is all.

991 By Mr. Owens: Mr. Freeman then identified a person with whom that conversation was had, and I move that be stricken.

By the Court: The document speaks for itself. He will offer it in evidence, and I am going to rule upon it without any comment on the contents of it.

By Mr. Freeman:—

Q. Mr. Dever—

A. Yes.

Q. Thank you. Now, I show you a document that I have had marked as Plaintiff's Exhibit No. 44, for identification, which is a two-page memorandum dated November 17, 1955, and again I ask you whether or not this document refreshes your recollection with respect to a conversation you had with Mr. Diver on or about November 17, 1955?

By Mr. Thompson: We object to this constant reference to Mr. Diver. He is no part of this lawsuit.

By Mr. Freeman: I don't think the jury knows who he is, but I am identifying him for Mr. Wilbur.

By Mr. Thompson: Ask proper situations. Ask him if the document refreshes his recollection, and no-
992 body will object to that. You are making a speech in connection with it.

By Mr. Freeman: Your Honor, I resent the remark. I think I stand here in a very embarrassed and shackled position. I don't think it is necessary for Mr. Thompson to advise me how to ask these questions.

By the Court: I don't resent the remark. I think it is in bounds. If Mr. Diver is not a party to the proceedings, you ought to know it is not admissible under any conditions, and I am merely going to let him answer yes or no. Counsel has a perfect right to make objections. Nobody stands shackled here. If anybody is shackling anybody, I am doing it, because I have limited the issue.

By Mr. Freeman: You have.

By the Court: All sides objected to it, and I want the jury to know it is my doing, not that of anyone else.

By Mr. Freeman: Not all the sides. There is one
993 of the defendants that is very much for this.

By the Court: There was a general objection by

everybody at the outset when I ruled upon it.

By Mr. Freeman: I am sorry, your Honor.

By the Court: All right.

By Mr. Freeman:

Q. The question, Mr. Wilbur, is does it refresh your recollection of this conversation?

A. Yes.

Q. Does it accurately set forth the substance of that conversation?

A. I couldnt answer yes or no on that practically.

By the Court: Then you can't answer it.

By Mr. Freeman: What was the last word of the answer?

By the Court: "I can't answer yes or no."

By Mr. Freeman: The last word?

(Thereupon the record was read as above recorded.)

By Mr. Freeman:

Q. Does it, in substance, set forth the conversation with reasonable accuracy?

994 A. Yes, sir, it does.

By Mr. Freeman: I offer in evidence the three documents previously marked as Plaintiff's Exhibits 42, 43 and 44.

By Mr. Owens: Objection.

By the Court: The objection will be sustained.

By Mr. Freeman: I am to assume, your Honor, that all questions that I would put to this witness with respect to his activities in 1955 in connection with this real estate transaction, whatever it is, would be objectionable and sustained, and this entire line is being prevented?

By the Court: That is correct.

By Mr. Freeman: Then I will excuse the witness, and I will make an offer of proof.

By the Court: All right.

By Mr. Thompson: Just a minute, please.

We object to the statement.

By the Court: The objection will be sustained, and it may be stricken.

By Mr. Freeman: What statement?

By the Court: That you would make an offer of proof.

995 By Mr. Thompson: On a real estate transaction.

By the Court: The jury has no right to know about it. It is to be excluded from them.

Proceed with the next witness.

(Witness excused.)

By Mr. Freeman: Your Honor, I would like to straighten that out for myself and for the jury. I believe that where questions are asked which I regard as proper and you, in your wisdom, decide that the question should not be answered, that I do have a right not in the presence of the jury to make an offer of proof, and that right I propose to adhere to.

By the Court: There is no question about it, but you can't tell the jury that you are going to make an offer of proof, because that has connotations, intonations, and inferences, and they are not to have it. That is why you have it outside of the jury.

Call the next witness.

By Mr. Freeman: I would like to make my offer of proof, your Honor, and I will take the rest of the morning and do that.

By the Court: All right, the jury may be excused.

996 By Mr. Thompson: You are excusing the jury until what time, then?

By the Court: For lunch, and have a nice time.

By Mr. Thompson: Until what time?

By the Court: Until 2:00 o'clock.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. Freeman: Did you say you were making a motion for a mistrial?

By Mr. Thompson: I didn't say anything of the kind. Just keep still about it. I will make my motion when I get to it.

By Mr. Freeman: All right.

By the Court: Make your offer of proof.

By Mr. Thompson: The jury is passing through the door, your Honor.

By the Court: They are going out to lunch. We will take a five-minute recess. It may take five minutes, and then we will be sure they are out.

(Thereupon a short recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

997 By Mr. Thompson: I have a group appointment at 12:15.

By the Court: We will recess until 2:00 o'clock.

By Mr. Meserow: Can you make it until 2:15?

By the Court: I can't go that far.

By Mr. Freeman: 2:00 o'clock, your Honor? I would not oppose 2:15.

By the Court: 2:00 o'clock. I want it at 2:00 o'clock so we can go on.

(Whereupon a recess was taken in the hearing of the above-entitled case at 2:00 o'clock p.m. of the same day, Friday, April 29, 1960.)

998 • • (Caption—No. 56 C 323) • • •

Chicago, Illinois
Friday, April 29, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John J. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

999 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of Defendant railroads.

1000 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

(The following proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: I only want one word of advice on a factual situation with the Court. Mr. Monaco is one of the witnesses who has been subpoenaed, and he is the witness, the subject of whose testimony will be this truck transaction with Hugh E. Cross down at Carrollton, where your Honor has already ruled on the documents. I wanted you to know that.

By the Court: Same objection in the same category.

By Mr. Thompson: When we make the objection, we won't have to explain that.

By the Court: Bring out the jury.

By Mr. Freeman: Before you bring out the jury, your Honor, I have a motion I would like to make. In view of your remarks to the jury this morning, which I have now reviewed, I find, and my associates find, and we are of the opinion we cannot have a fair trial by this jury, and therefore we request that you withdraw a juror,

1001 and we move that you declare a mistrial.

By the Court: Motion denied. I have given a lot of consideration to what I told the jury in open court, and, if anything, I have mentioned no names of lawyers, and I referred to no sides. The motion is denied. Call the jury.

By Mr. Freeman: I am going to make an offer of proof of Wilbur. However, I can take Mr. Monaco as long as the jury is coming in.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

1002 FRANK L. MONACO, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you state your name and your address, sir?

A. Frank L. Monaco, 5205 South Parkside, Chicago, Illinois.

Q. What business or profession are you in?

A. I work for the Lasham Cartage Company here in Chicago.

Q. Are you district manager of the Lasham Cartage Company?

A. At the present time, yes, sir.

Q. Were you district manager in 1955?

A. I believe at that time, yes, sir. I was mostly connected with maintenance and—

Q. Finish your answer.

A. I am connected with maintenance, the district manager in connection with maintenance and equipment.

Q. And is the Lasham Cartage Company related or affiliated to some other corporation?

A. Yes, sir.

1003 Q. Is it a subsidiary of the United States Freight Lines?

A. The United States Freight Company, I believe, sir.

Q. It is a subsidiary of the United States Freight Company, is that it?

A. Yes, sir.

Q. Do you know what affiliation the United States Freight Lines had in 1955 with any railroad?

By Mr. Thompson: We object to that as immaterial.

By the Witness:

A. I don't know.

By Mr. Freeman: He doesn't know, so I can't ask him any further about it.

By the Court: I don't know the purpose of this. I will overrule the objection.

By Mr. Freeman:

Q. Mr. Monaco, did you have occasion in 1954 to make an analysis of equipment that the Lasham Cartage Company would require, more specifically tractor equipment?

A. What was that, sir, again?

1004 (Whereupon the record was read as above recorded.)

By the Witness:

A. As far as I can remember, I possibly did.

By Mr. Freeman:

Q. And had you recommended in 1954 that the Lasham Cartage Company acquire 30 tractors from the International Harvester Company?

By Mr. Thompson: We object to this as immaterial. It has no relevancy to this case.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Mr. Monaco, did you place an order in 1955 for 30 tractors with anybody?

By Mr. Thompson: Objection to that as immaterial.

By the Court: Same objection, same ruling.

1005 By Mr. Freeman:

Q. Mr. Monaco, did you place an order for thirty tractors with Hugh E. Cross at the Carrollton Farm Supply Company?

By Mr. Meserow: Objection:

By Mr. Thompson: I object.

By the Court: I admonish you not to do that.

By Mr. Freeman: I have to ask that question.

By the Court: You have asked the same question—

By Mr. Freeman: You said it was not relevant.

By the Court: Objection sustained. The question may be stricken and you needn't answer.

By Mr. Freeman: I want to have marked for the purpose of identification as Plaintiff's Exhibit 45, this two-page order reputedly signed by F. L. Monaco—

By Mr. Thompson: Now, if your Honor please. Mark

the document, and that is all you need to do.

1006 By Mr. Freeman: This is dated March 11, 1955, and addressed to Mr. Hugh E. Cross, Carrollton, Illinois.

By Mr. Thompson: Your Honor—

By the Court: That may be stricken. The document may be marked, and counsel's remarks may be stricken as to whom it is addressed. The document speaks for itself.

(Thereupon the said document was marked Plaintiff's Exhibit 45 for identification.)

By Mr. Freeman: And I would like to have marked as Plaintiff's Exhibit 46, this two-page document allegedly signed by Mr. Monaco, dated March 11, 1955, and addressed to the same individual.

By Mr. Thompson: If the Court please—

By the Court: I ask you not to repeat to whom it is addressed.

By Mr. Freeman: I cannot understand, your Honor. I am trying to identify these documents, and I don't know how else to do it.

By the Court: I have ruled that that is imma-

1007 terial and doesn't belong to this issue, and you understand it and everybody else in this courtroom understands.

By Mr. Freeman: I understand it perfectly.

By the Court: Repeating it is to prejudice the jury.

By Mr. Freeman: It is not so, and I think that remark is not fair.

By the Court: Objection sustained. That part may be stricken.

By Mr. Freeman: I have no desire to prejudice this jury, but I do feel I have a right to make, to attempt to make a record here, and the only way I can make a record is to identify documents with this witness.

By the Court: I have no objection to having the witness identify the documents.

By Mr. Freeman: You ask me to identify them in a vacuum and then you declare they are immaterial because I haven't identified them.

By the Court: Objection sustained. You may proceed.

1008 (Thereupon the said document was marked Plaintiff's Exhibit 46 for identification.)

By Mr. Thompson: If the Court please, counsel obviously knows that all he needs to do is mark them with a number and then they are identified.

By the Court: That is correct.

By Mr. Freeman: Thank you very much, Mr. Thompson. I ask that this document, which is a purchase order No. 949, dated April 12, 1955, from Lashara Cartage Company be marked for the purpose of identification Plaintiff's Exhibit No. 47.

(Thereupon the said document was marked Plaintiff's Exhibit 47 for identification.)

By the Court: That is prejudicial, a purchase order from this company. Objection sustained.

By Mr. Freeman: From Lasham Cartage? What is prejudicial about it?

By the Court: It hasn't any bearing on this issue.

1009 Objection sustained. It may be stricken.

By Mr. Freeman: What is prejudicial about a purchase order?

By the Court: Because you tell them in substance what it is.

1010 By Mr. Freeman: I tell them it is a purchase order of the Lasham Cartage Company.

By the Court: For the trucks that I have ruled out.

By Mr. Freeman: You have ruled out?

By the Court: I have just ruled on the very same thing. I am not talking about the document, but the subject matter, the area.

By Mr. Freeman: I haven't even gone into that. I just asked to have this document marked as Plaintiff's Exhibit 47 for identification.

By Mr. McConnell: I want to note an exception to the Court's statement, where he is simply describing documents and having them marked, which we have done often, Judge Thompson and I and every lawyer in this court room have done for years and years, his statement that it is prejudicial and I except to that statement to the jury.

I don't know how we can get a trial before the jury if you tell them that everything we do is prejudicial.

1011 By the Court: I am not concerned with what you think. You make your offers, and I will make my rulings on the objections, and I want no bickering. If I am wrong, I will be reversed by the Court of Appeals. Mr. Freeman can do it on his own when he is examining a witness.

By Mr. Freeman: We are not interested in the Court of Appeals at this point. We are interested in this jury.

By the Court: So am I interested in the jury, vitally interested.

By Mr. Freeman: I ask that this two-page document dated April 12, 1955 from the Lasham Cartage Company be marked for the purpose of identification as Plaintiff's Exhibit 48, for identification.

By the Court: It may be so marked.

(Thereupon said document was marked Plaintiff's Exhibit No. 48 for identification.)

By Mr. Freeman: I ask that this document addressed to the Lasham Cartage Company from a point down in
1012 southern Illinois and dated April 14, 1955 be marked as Plaintiff's Exhibit 49 for identification.

By the Court: It may be so marked.

(Thereupon said document was marked Plaintiff's Exhibit No. 49 for identification.)

By Mr. Freeman: And this document, dated June 8, 1955 similarly addressed and from the same general location in the State be marked as Plaintiff's Exhibit No. 50 for identification.

By the Court: It may be so marked.

(Thereupon said document was marked Plaintiff's Exhibit No. 50 for identification.)

By Mr. Freeman:

Q. Mr. Monaco, I show you Plaintiff's Exhibits 45 and 46 for identification. Are these inquiries, requests for quotations that you prepared on behalf of the Lasham Cartage Company?

A. Yes, sir.

Q. And do they bear your signature, both of these documents?

A. Yes, sir.

1013 Q. And were they prepared in the regular and ordinary course of your business?

A. Yes, sir.

By Mr. Freeman: I ask that Plaintiff's Exhibits 45 and 46 be admitted in evidence.

By Mr. Meserow: Objection.

By Mr. Thompson: We object to them as immaterial—

By the Court: Louder, please?

By Mr. Thompson: We object to them as immaterial to the issue.

By the Court: Objection sustained.

By Mr. Freeman:

Q. I ask you, Mr. Monaco, if this exhibit which has been identified as Plaintiff's Exhibit 47 is a purchase order of the Lasham Cartage Company, No. 949, dated April 12, 1955?

A. Yes, sir.

Q. And does it involve the purchase of International Harvester tractors?

By Mr. Thompson: We object to that.

By the Court: Objection sustained.

By Mr. Thompson: Mr. Freeman, you know better. That is terrible.

1014 By Mr. Freeman: I do know better, very much better.

By the Court: I don't want arguing between counsel.

By Mr. Freeman: Will the Court tell me to whom that remark was addressed?

By the Court: Both counsel, not to one. I don't want counsel to be arguing with each other.

By Mr. Freeman: Thank you.

I offer Plaintiff's Exhibit 47 in evidence.

By Mr. Meserow: Same objection.

By Mr. Thompson: Same objection.

By the Court: Same ruling.

1015 By Mr. Freeman:

Q. Mr. Monaco, I ask you if you can identify the signature of the vice president of your company, Mr. R. G. Newman, as it appears on Plaintiff's Exhibit 48 for identification? Is that his signature?

A. Identify his signature?

Q. Is that his signature?

A. I don't know if it is his signature or not. I know my own.

Q. Do you know his signature?

A. I don't know if it is his signature or not.

Q. You cannot identify it?

A. Well, it probably is. I can't identify somebody else's signature, I don't think.

Q. All right. Let me ask you, Mr. Monaco, have you ever received any communications from Mr. R. G. Newman during the course of your engagement?

A. Yes.

Q. How long have you been engaged at the Lasham Cartage Company?

A. I have been with Lasham Cartage for eighteen years.

Q. Have you had frequent communications with
1016 Mr. Newman?

A. Yes, sir.

Q. Has he signed his communications from time to time?

A. Yes, sir.

Q. I ask you to look at the signature on Plaintiff's Exhibit 40, and tell me whether that is his signature?

A. Well, it appears to be his signature. It is the way he writes it, but I am not going to say that it is or not. I don't know whether it is his or not. It appears like his signature as far as I can see.

By the Court: I will not exclude it for lack of identification. I think that is sufficient.

By Mr. Freeman: Thank you, your Honor, I offer in evidence Plaintiff's Exhibit 48.

By Mr. Meserow: Objection.

By Mr. Thompson: Same objection.

By the Court: Objection will be sustained on the ground that it is immaterial to this issue.

By Mr. Freeman:

Q. Now, Mr. Monaco, I show you Plaintiff's Ex-
1017 hibit 49 for identification, which is a letter addressed to the Lasham Cartage Company, Chicago offices,

dated April 14, 1955, from a mysterious stranger. Did you receive that?

By Mr. Keating: Objection to the comment of counsel.

By Mr. Thompson: If the Court please, I object—

By the Court: Objection sustained. The remark may be stricken. The jury is instructed to disregard it.

By Mr. Freeman:

Q. What is your answer, Mr. Monaco?

A. I don't know whether they want me to answer it or not.

By the Court: Yes, please. If you can answer it, you may.

By Mr. Thompson: Well, I am sure I don't know what the question is.

By the Court: If the witness doesn't understand—

By Mr. Freeman: The witness knows the question.

By the Court: If you don't know the question, say so, and I will have it repeated to you.

By Mr. Thompson: Of course, it has that erroneous and improper statement in the question. I don't know how much of it is stricken. I don't know what the witness has in mind. I am sure I wouldn't know how to answer it at this stage.

By Mr. Freeman: I haven't asked you to answer it, Mr. Thompson.

By the Court: Mr. Witness, do you understand the question?

By the Witness: Well, he wants to know if I received this letter.

By the Court: That is right.

By the Witness:

A. I don't know whether I have or not, because it isn't addressed to me.

By the Court: All right. That is the answer.

By Mr. Freeman:

Q. Who is it addressed to?

By Mr. Thompson: I object to that.

1019 By the Court: Objection sustained.

By the Witness:

A. It probably was, maybe I did get it, but it isn't addressed to me—

By Mr. Thompson: Mr. Witness, please.

By Mr. Freeman:

Q. Was this addressed to your office in Chicago, the Lasham Cartage Company?

A. It states so, yes, sir. This states 2601 Archer Avenue.

Q. Are you in charge of your offices in Chicago, the district manager?

A. No, I have a vice president also.

Q. Who is your vice president?

A. At the moment it is R. E. Jordan.

Q. Who was vice president in 1955 when this letter was received?

A. I believe it was R. A. Williams.

Q. Were you district manager in April 1955?

1020 By the Court: For the sake of the record and for brevity and to save time, at this time I am not going to exclude the document on any technicalities as to who received it. If any objection is made as to its irrelevancy to this issue, that is the only ruling I am going to make.

By Mr. Thompson: We so object, if he is offering it.

By the Court: He hasn't offered it yet.

By Mr. Freman: I will offer it in a minute.

By Mr. Freeman:

Q. Would your answers to Exhibit 50 for identification be the same with respect to this communication to, in this instance, United States Freight Company?

A. I woul dsay so because it isn't addressed to me. I mean, I don't know whether I have seen them or not. I couldn't say.

By Mr. Freeman: I understand. I understand.

I offer in evidence Plaintiff's Exhibits 49 and 50.

By Mr. Meserow: Objection.

By Mr. Thompson: Same objection, that they are immaterial.

1021 By the Court: Same ruling. They will be excluded.

By Mr. Freeman:

Q. Now, Mr. Monaco, were you directed by your president in New York as to whom to place this order for 30 tractors?

By Mr. Meserow: Objection.

By Mr. Thompson: Objection.

By the Court: Objection sustained. The question may be stricken and he needn't answer.

By Mr. Freeman: I want to establish the foundation so I can make an offer of proof. I don't know what—

By the Court: The witness is on the stand. You can make any offer on that subject you wish, but you can't do it by questions to cover the subject.

By Mr. Freeman: All right.

By Mr. Freeman:

Q. Mr. Monaco, there was an order placed for 30 tractors involved in these papers. Was that the first and only order you ever placed with that organization?

By Mr. Meserow: I object.

1022 By Mr. Thompson: Objection.

By the Court: Objection sustained. He needn't answer.

By Mr. Thompson: I ask that this line of questions—

By Mr. Freeman: I have nothing further of Mr. Monaco.

(Witness excused.)

By Mr. Freeman: Will you excuse the jury so I can go forward?

By the Court: All right, folks. This may take a little longer than you expect, so you can settle down and relax.

By Mr. Freeman: I really think I will be the rest of the afternoon.

By the Court: It is Friday afternoon. Let me talk to the jury for a moment.

1023 You understand this is your last day of the jury, am I right? Be seated, please. I am speaking for the lawyers and for the litigants, and for myself, all of us.

We regret the need for holding you over. I am sure that I have the statements for both sides that they are cooperating to make it as short as they can. They tell me it will not take over a few days, but I am not holding anybody to it. We will do the best we can with it.

If you have any grievances, charge them to me, not to the lawyers. I have broad shoulders, and I hope you have a nice week end, and go out and have a good time. Please don't discuss the case with anyone, not even among yourselves.

I don't want to keep you here for two hours and then put you on a half hour. Ten o'clock here in the coop Monday.

(The following proceedings were thereupon had outside the presence and hearing of the jury:)

By the Court: We will take a five-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1024 By Mr. Thompson: Your Honor, for the benefit of the persons who have been called here as witnesses, if there are not going to be any more called today—

By the Court: You have no jury, so they may be excused until Monday morning.

By Mr. Thompson: However, they are welcome to stay, if they wish?

By the Court: Yes. All witnesses and all parties in interest may leave, except the lawyers. I have no objection to their staying, the witnesses, but they will not be called because we have no jury. All right.

By Mr. Freeman: Your Honor, pursuant to the foundation that was laid this morning in my examination of Mr. Albert A. Wilbur, if permitted to ask the questions that have been rejected, I would establish through Mr. Wilbur's testimony that he was engaged as a real estate broker for Mr. Hugh W. Cross in 1955; that on June 29 and 30, 1955, Mr. Cross and Mr. Wilbur and a Mr. Deakins, not together, but during those two days, did look at various houses in the Chicago area.

That on June 30, Mr. Cross indicated that he would accept, or that he was interested in a house in Deerfield, Illinois, at 320 Margate Avenue, that he left Washing-
1025 ton, and then on July 1, 1955, he called Mr. Wilbur on the long distance telephone and told him that he wanted to buy the house in Deerfield.

That on July 8 a contract for the purchase of this house was transmitted to Mr. Cross who executed the contract, returned it to the attorney for the seller in Waukegan, a Mr. Diver, and inserted a separate paragraph in the contract that possession was to be given the seller by September 15.

That Mr. Wilbur communicated both with Mr. Hugh W. Cross and with Mr. Clarence Diver and sought to have the transaction closed as promptly as possible.

That on July 19, 1955, Mr. Wilbur advised Mr. Cross by letter that, "As soon as the agreement is signed by Mrs. Erickson," who was the seller of the property, "I", meaning Mr. Wilbur, "am going to take an architect friend of mine over to the house and get his ideas on the approximate cost of providing a room for your maid."

That he, Mr. Diver, was called by Mr. Wilbur several times during the period from July to November, 1955, in an attempt to get the real estate deal closed as promptly as possible, and in a communication of November 14, 1026 he reiterated that desire to clean up the title so that the deal could be closed during that week.

While this letter was written on November 14, on November 16, Mr. Wilbur, representing Mr. Cross, called Mr. Diver and stated that in view of the Senate Committee's investigation with respect to Hugh Cross, that Mr. Cross was more anxious than ever to drop the deal and would gladly forfeit the $4,500 of earnest money already paid.

Mr. Diver told Mr. Wilbur that he could not accept the forfeiture because of an estate problem, that he would enforce the contract by a suit for specific performance unless the deal was culminated.

That the following day, on November 17, Mr. Wilbur called Mr. Diver and pointed out in substance that in view of his insistence upon going through with the deal, he, Mr. Wilbur, the real estate broker, would take the title to the property, would lay out the money, and Mr. Wilbur would testify separately that he had decided to loan the money to Cross who was his friend without any evidence of this loan in the form of a note or other evidence, and without requiring interest.

That the transaction was completed in this manner with Mr. Wilbur first taking the title and then later having the title put into a land trust.

That the conversations between Mr. Wilbur and
1027 Mr. Diver are reported in Plaintiff's Exhibits 43 and 44, which have been rejected.

I would like to establish through Mr. Monaco who appeared here this afternoon—

By Mr. Thompson: Excuse me. You are finished with that point?

By Mr. Freeman: Yes.

By Mr. Thompson: My objection, of course, was previously made before this offer was ever made that it should not even be in the record, as it is obviously outside the issues, and so I not only object to it, but I move to strike all of this offer of proof.

By the Court: Are you through with that subject?

By Mr. Freeman: I am through with that witness.

By the Court: With that subject?

By Mr. Freeman: I can offer it by witnesses.

By the Court: I understand.

By Mr. Freeman: I am through with Mr. Wilbur and the house in so far as Mr. Wilbur is involved.

By the Court: On that part the objection will be sustained and it may be stricken.

By Mr. Thompson: Of course, I should have included in my objection that it is an offer of proof with a lot of conclusions incorporated in the offer which, of course, are not strictly actual.

1028 By Mr. Freeman: I suppose it might be appropriate to offer also in evidence the deposition of Mr. Wilbur. I will, before the end of our offer, I will offer in evidence the depositions that were actually taken of these witnesses under oath.

By the Court: On the same subject.

I will expect you to point out to me something else. If and when that is offered—and you may offer it now for that purpose—the objection will be sustained, and they will not be received because of the reasons already stated.

By Mr. Freeman: I would like to offer the deposition of Mr. Wilbur solely directed to the issue of the house.

By Mr. Meserow: Objection, your Honor.

By the Court: The objection will be sustained on the same ground, not any other ground, but on the ground they are not pertinent to the issue involved before me now.

By Mr. Freeman: And on the basis of the foundation laid this afternoon and the examination of Mr. Frank Monaco—

By Mr. Thompson: Mr. Freeman, I am sorry to interrupt again.

By Mr. Freeman: That is all right.

By Mr. Thompson: I don't think that I went to the
1029 point of objecting to even making an offer of proof on this.

By the Court: Yes, you have.

By Mr. Thompson: No one who has any connection with this case, defendants or otherwise, is connected with this transaction.

1030 By the Court: Judge Thompson, you have made an objection and I let it stand for the record all the way through, that I have a right to disregard their offer—that I can refuse to accept an offer of proof on any issue that is not pertinent to the issue in the case, and I overruled that objection, and I am letting him make it.

By Mr. Freeman: With respect to Mr. Monaco, I would prove through Mr. Frank Monaco that as he testified here, he was district manager of the Lasham Cartage Company in 1955, and that he had made investigation of the equipment requirements for that operation, and that he had recommended in 1954 that they purchase International Harvester tractors.

That the Lasham Cartage Company is an affiliate of the United States Freight Lines, and I will connect up the

United States Freight Lines through other witnesses to demonstrate that the United States Freight Lines was owned, forty-five percent, by the New York Central.

This is not part of Mr. Monaco's testimony, however, that the president of the Lasham Cartage Company, Mr. Neuman, directed Mr. Monaco to place an order for thirty International Harvester tractors with Mr. Hugh E. Cross, who was the son of Hugh Cross, and who had a farm agency of International Harvester in Carrollton, Illinois.

That on January 31, 1955, the National Fleet Sales representative of the International Harvester Company had submitted quotations to Mr. Monaco in Chicago, but on March 11, 1955, as appears from Plaintiff's Exhibits 45 and 46, Mr. Monaco asked Mr. Hugh E. Cross for quotations on a total of twenty-five tractor units, which later became thirty.

That on April 12, 1955, the Lasham Cartage Company placed a purchase order with the Carrollton Farm Supply, attention Hugh Cross, Jr., for thirty International Harvester tractors, and, as shown by Exhibit 48, this order was placed on the basis of an override of $150.00 per unit or a net profit of $4,500, no matter what the cost of the tractors.

That on April 14, 1955, Mr. Hugh E. Cross of the Carrollton Farm Supply Company addressed a letter to the president of the Lasham Cartage Company, signing it "Hugh" saying that he had had—and I will read the letter, which is as follows:

"Regarding our telephone conversation of April 13, 1955, with reference to price increase of truck on your purchase order 949, I confirm that the increase will be upward to $100 per truck on the 162 models and upwards to $150 per truck on the CO-205 models. These prices are listed prices. They are also round

figure prices. Any variation downward will naturally be in your favor and passed along to you accordingly."

That on June 8, 1955, Mr. Hugh E. Cross addressed another letter to the president of the Lasham Cartage Company, this time in New York, and similarly called his attention to the invoice that was due and owing to the Carrollton Supply Company by reason of the purchase of these thirty tractors which were drop-shipped in Springfield, Ohio, Mr. Cross never having handled or seen the tractors at all.

1633 That is all I will present through Mr. Monaco. Other information with respect to this tractor deal will be presented through other witnesses that I will bring to your Honor's attention.

By Mr. Thompson: Objection to the offer of proof.

By the Court: Objection sustained, and it may be stricken.

By Mr. Thompson: And I object to the conclusions and the hearsay contained in the offer of proof.

By the Court: Judge Thompson, I can't do any more than strike it.

By Mr. Freeman: Excuse me?

By the Court: I was talking to Judge Thompson, and I said, "I can't do any more than strike it."

By Mr. Freeman: I want to proceed further with offers of proof of witnesses that have been previously presented, foundational questions having previously been made.

With respect to the testimony of Mr. Fred Gurley, president or former president of the Santa Fe Railroad Company and the president of that railroad in 1955, in response to questions presented to him, which have been rejected, we would establish through Mr. Gurley that early in 1955, prior to June, 1955, Mr. Gurley heard

1634 the statement made in Washington, possibly from a

railroad man, that Cross would become associated with the Keeshin organization if Keeshin succeeded in receiving the transfer contract.

That Mr. Gurley was requested to prepare an affidavit for the Senate investigating committee meeting—which was dealing with that problem in September and October of 1955, and he prepared an affidavit dated November 8, 1955, which has been marked here and rejected as Plaintiff's Exhibit No. 19.

That when this affidavit was received, the Senate Committee sent Mr. Gurley a telegram, which has been marked as Exhibit 20, saying that his affidavit was insufficient and also sending him a subpoena to appear before the committee at its executive session, which has been marked as Exhibit No. 21.

Mr. Gurley would then have testified that to avoid making a public appearance before that Senate Committee, he prepared an affidavit on November 10, 1955, which has been marked as Plaintiff's Exhibit No. 22, which contains the statement that I have previously read with respect to Cross' future association with the Keeshin organization, and Mr. Gurley has testified that that statement was true and correct as contained in the affidavit.

We would further establish, through Mr. Gurley,
1035 that on or about May 26, 1955, he did receive a telegram from Mr. Hugh W. Cross advising Mr. Gurley that Mr. Cross intended to be in Chicago from May 31 to June 2nd and would telephone Mr. Gurley in the hopes that he could have a chat with him.

1036 Further, I would establish through Mr. Gurley that the Santa Fe, the railroad of which he was president, had important cases pending before the Interstate Commerce Commission during this period in 1955, and for a subsequent period after June 1955.

That is all of the offer I would make through Mr. Gurley, Mr. Thompson.

By Mr. Thompson: If the Court please, we will challenge the good faith of this offer of proof, in addition to the other objections that we might make.

Mr. Gurley denied on his pretrial hearing as emphatically as one could deny that he ever received any telegram from Mr. Cross, and his offices there testified that a diligent search failed to disclose any such telegram as having been received.

Also, Mr. Gurley in his affidavit, as will appear from the affidavit, separated two things. He said that early or some time in the spring of 1955, before June 15, we had heard that Mr. Cross was unhappy in Washington, and that he might return to Illinois; and then he says, in his affidavit, subsequent to that time, I heard a rumor,

1037 which I don't know where I heard it, and I have a very hazy recollection of it, a rumor that Mr. Cross might become associated with the Keeshin industry in some fashion.

Anyway, the affidavit separates the two things as to time and event. As far as the telegram is concerned, the evidence is directly contrary to the representation of counsel.

By Mr. Freeman: Your Honor, in the case of Mr. Gurley, particularly, we were not permitted to read his answers to the questions presented in deposition, so I would want to offer in evidence the deposition of Mr. Gurley.

With respect to Mr. Thompson's remark about—

By the Court: You mean on that subject?

By Mr. Freeman: No, Mr. Gurley's entire deposition, I think, deals primarily with this issue that you have described as conspiracy rather than—

By the Court: All I want to be sure is that if there is any subject in those depositions not touching upon this phase of it, I want to rule upon those. I only want to rule upon all or any part of the deposition that belongs in that area.

By Mr. Freeman: I think it is safe to say that aside from the man's name, all of it would pertain to
1038 that area.

By the Court: All right. The deposition will be rejected as this time on the grounds already stated. Even in the light of Judge Thompson's qualifications of your proposed offer, I can only sustain his objection and strike it.

By Mr. Freeman: Yes, and with respect to Mr. Thompson's rather definite remark that this was not a good faith offer and there was a very firm denial, I would for the record specifically call the Court's attention to Mr. Gurley's testimony on Pages 2407 and 2409, where the best he could do was to say he did not recall receiving the telegram.

If there is any problem about the telegram, we will get another witness in Mr. Gurley's organization to discuss that.

May I also—

By Mr. Thompson: If the Court please, again I must challenge the statement.

By Mr. Freeman: This is not part of my offer.

By Mr. Thompson: The question on Page 2407 is:

"I show you a telegram that has been identified as Brennan Exhibit 5, which is a telegram sent by Mr. Cross to Mr. Feucht of the North Western, and
1039 ask you whether you received a telegam similar to that."

The answer is:

"I did not."

By Mr. Freeman: Oh, yes. Well, of course, we will establish through Mr. Cross that he did send the telegram, and we do have evidence of it anyhow, and Page 2409—

By the Court: I think the offer is complete.

By Mr. Thompson: 2409 says the same thing.

By the Court: I think the offer is complete. You have offered the entire deposition. I have ruled it out. So whatever is in it is part of your offer.

1040 By Mr. Owens: Your Honor, with respect to all of these objections, I would like the record to show that on behalf of Hugh Cross, we are making similar objections and joining in the objections made by Mr. Thompson.

By the Court: They are stricken from the record for all intents and purposes.

By Mr. Freeman: I would like to supplement my offer with respect to Mr. Fred Gurley to include establishing through Mr. Gurley that he attended a meeting on May 27 in Washington D. C. of the American Association of Railroads, at which were present Mr. Simpson, Mr. Perlman, Mr. Johnston, and himself.

By the Court: Same objection; same ruling.

By Mr. Freeman: I would establish on the basis of the foundation we have laid in the reading of Mr. Simpson's deposition, and we make an offer of proof through Mr. Simpson's deposition to establish that he, Mr. Simpson, had met Mr. Cross when he became a Commissioner; that Mr. Cross visited Mr. Simpson in Baltimore and inquired about the status of the transfer negotiations in Chicago; that included in his inquiry was also a discussion of the Baltimore and Ohio financing problems;

That one such meeting occurred on April 23 and 1041 was preceded by a long distance call made by Mr. Cross on April 18 to secure an appointment, and

another such meeting occurred on April 8. Although Mr. Simpson denied emphatically that he did meet with Mr. Cross on April 8, his deposition, which I will also offer in evidence at the proper moment, establishes that meeting:

That Mr. Simpson at his first meeting with Mr. Cross said he did not know of any of the details of the transfer negotiations; that he asked his man Whittington to bring him down to date; that he did receive a memorandum from the vice-president of that department on April 11, 1955, bearing upon the transfer situation, and this memorandum has been admitted into evidence as Plaintiff's Exhibit 16;

That Mr. Simpson would further testify that Cross made further inquiry of him with respect to the transfer negotiations, and pursuant thereto Simpson secured information from his passenger offices with respect to meetings of the sub-committee and requests for competitive bidding, which information was relayed to Mr. Cross;

That, Mr. Simpson says, and originally testified, he had one telephone conversation that he made to Mr. Cross, or one telephone call that he placed to Mr. Cross, and that telephone call occurred on April 25 or 26; that he denied ever making a second telephone call to Mr. Cross; that he denied ever calling Mr. Cross with respect to the financial problems of the Baltimore and Ohio Railroad;

That he accused the interrogators of having a "hell of a bad memory" but it developed during the course of the deposition that he had called Mr. Cross a second time on September 7, 1955; that he did make inquiry about the Baltimore and Ohio financial problems;

That Mr. Cross was on vacation in Charlevoix, Michigan at the time, and hurried back to Washington to have a

meeting with Mr. Simpson on September 8, the very following day;

That with respect to the April 11th memorandum that had been prepared and transmitted to Mr. Simpson, which has been admitted into evidence as Plaintiff's Exhibit 16, Mr. Simpson would testify that he read the memorandum within a few days of its date; that it is a very detailed memorandum and contains full information with respect to the appointment of a sub-committee to study the matter and request for competitive bidding, but that this

1043 information, Mr. Simpson regarded as not sufficiently up to date to turn over to someone of the status of Commissioner Cross; that no other memorandum on the transfer issue existed in the Simpson file, and the original copy of this memorandum of April 11 could not be located and was believed mislaid;

Mr. Simpson denied he gave the memorandum to Mr. Cross.

1044 We would further establish through Mr. Simpson that Mr. Cross called Mr. Simpson repeatedly; that he called him on May 13, May 20, May 25, in New York, and June 8;

That Mr. Simpson would testify that in every instance of a call from Mr. Cross, Mr. Cross brought up the subject of the transfer negotiations;

That in his call on May 25, which was after the committee meeting of May 19, Mr. Cross called to be brought down to date on the transfer negotiations;

That in these conversations Mr. Cross did the talking and Mr. Simpson listened, that he was told with respect to transfer negotiations;

That Mr. Simpson did not receive telephone calls from any other commissioners.

With respect to the Baltimore and Ohio financing pro-

gram, Mr. Simpson would testify that this financing program was before the Interstate Commerce Commission from the fall of 1954 to the spring of 1956, with various procedural problems involved;

That Mr. Cross, early in 1955, was a member of the Interstate Commerce Commission's finance division, which was Division IV; that Mr. Simpson could not recall 1045 whether Mr. Cross had any connection with these financial dockets;

That the Baltimore and Ohio financing involved the largest railroad financing operation in history. Approximately $300,000,000 in bonds were refinanced, and the Baltimore and Ohio Railroad realized annual savings in interest of three and a half million to four million dollars;

That the Interstate Commerce Commission performs regulatory functions in the case of security issues; that the Commission must determine whether the securities that are proposed are consistent with the public interest; that the timing of the Commission's approvals are important in connection with the underwriting;

That on June 8, Cross called Mr. Simpson to advise Mr. Simpson that Keeshin had been awarded the contract, and that Cross inquired about developments a couple of times later. This is supported by an affidavit of Mr. Simpson that is marked as Plaintiff's Exhibit 14, but which has been rejected.

That Mr. Simpson had asked Mr. Whittington to bring him up to date and had received the April 11 memorandum in consequence; that his principal interest in the transfer negotiations was to hold the cost of the 1046 transfer down;

That a second inquiry was made to Mr. Whittington about the transfer negotiations about May 25;

That Mr. Simpson claims that he does not recall the

nature of Mr. Whittington's reports after his trip to Chicago;

That Mr. Simpson had a meeting with the eastern railroad presidents conference in New York on April 21, at which was present Mr. Simpson, Mr. Perlman and Mr. Symes of the Pennsylvania Railroad;

That on April 21, Mr. Simpson attended a dinner at the New York Railroad Club in New York City at which Mr. Cross was the principal speaker.

On April 29, Mr. Simpson's diary reveals that he had a breakfast meeting in a railroad car of President Touhy of the Chesapeake and Ohio, at which was present Mr. Perlman as well as other railroad president defendants here.

On April 29, he attended a board of directors meeting in Washington, D. C., of the American Association of Railroads, and there was present at that meeting besides Mr. Simpson, Mr. Perlman of the New York Central, Mr. Symes of the Pennsylvania, Mr. Johnston, Wayne Johnston of the Illinois Central, and Mr. Fred Gurley of the Santa Fe Railroad;

That on May 4th he attended a meeting in the Pierre Hotel in New York City, and his diary and his secretary's diary, which have both been marked as Plaintiff's Exhibits 17 and 18 and rejected, contains a notation, "See President Perlman after the meeting."

On May 19, he attended an eastern railroad presidents' conference in New York, at which Mr. Perlman of the New York Central and Mr. Symes of the Pennsylvania were present.

On May 27, he attended a breakfast meeting in Washington, D. C., in his own railroad car, at which President Perlman and Symes as well as others were present, as indicated by their diaries;

That on May 27 he attended a meeting of the American Association of Railroads in Washington, at which were present Mr. Perlman, Mr. Symes, Mr. Johnston and Mr. Gurley.

This is all that I would establish through the Simpson deposition.

1048 By Mr. Thompson: We object to the form and the content of the offer.

We object to the form in that it contains a lot of conclusions and argument which are not proper in an offer of proof.

We object to making a statement with the witness not on the stand, of things that he proposes to prove which are not within the content of the witness' testimony by deposition, which is available, so that all he can offer, if he is making an offer of proof properly under any circumstances would have to be confined to the deposition.

Our objection, of course, stands to the offer in all these respects.

By Mr. Freeman: My offer, of course, goes to this point: That if the questions that were presented to Mr. Simpson in the deposition were permitted to be answered, this would be his answer. Of course, I offer the deposition of Mr. Simpson to support it.

By the Court: Same qualification on the deposition, Mr. Freeman, that you are not offering anything except on this area? I mean, I don't want to blindly exclude anything in the deposition.

By Mr. Freeman: Would you then just exclude those things except that Mr. Simpson did testify that his

1049 —I don't know whether he used the word "principal,"

—that his sole interest was—

By the Court: Let's put it this way: I will even take a wider blanket than that. Anything independent of this area may not be considered by me in the exclusion. I am

only excluding anything that pertains to this excluded area, and objection will be sustained and it will be stricken.

By Mr. Freeman: The principal point I want to preserve, as I recall the deposition—

By the Court: I am preserving it for you unreservedly except on this area.

By Mr. Freeman: You have done that, but just let me note here that Mr. Simpson did state under oath that his interest in the Chicago transfer negotiations was primarily economic to secure the lowest possible cost. That, I believe, should be preserved.

By the Court: I have no objection.

By Mr. Freeman: Now I have been asked about Mr. Cross. I was going to make an offer of proof as to Mr. Cross. Is he still here?

By Mr. Owens: He has left for the day.

By Mr. Freeman: You wanted me to make the offer while he was here?

By the Court: He doesn't have to be here on the 1050 offer of proof.

By Mr. Owens: I told you at the time that he had left.

By the Court: I don't understand why you want him here.

By Mr. Freeman: I am willing to accommodate counsel—

By the Court: I am talking to counsel. I am not talking to you.

By Mr. Owens: You put him on before, you laid the foundation, and you withdrew him and said you would make an offer of proof. I am not agreeing that you should make an offer of proof.

By Mr. Freeman: I misunderstood. I thought you wanted me to withhold my offer of proof.

By Mr. Owens: No. I thought perhaps you wanted to examine him further before you launched into this.

By the Court: No, I excused him and all the witnesses.

By Mr. Thompson: I think as far as the other defendants are concerned, the statute contemplates, of course, that the witness be on the stand so you can challenge the good faith of an offer, if he goes out of line and says he is going to testify to something that he wouldn't teestify to.

By Mr. Freeman: This good faith challange has been made a lot. I would like very much to have the wit-
1051 ness testify.

By the Court: I don't understand that, Judge. Will you repeat that?

By Mr. Thompson: I say, the statute provides that the offer of proof should be made with the witness on the stand, and when and if there is an offer made that he will testify thus and so, and it is not true, the witness is here to refute it, of course.

By Mr. Freeman: I would like to see that rule.

By the Court: I would like to see that rule, too. I don't follow it. I don't question it, Judge, but I don't know anything about it.

In any event, we have gone beyond that point. We have all agreed, at least, that we are going to offer the proof; that we qualified the witness by his being on the stand. He asked him some questions, I sustained the objections, and now they make an offer of proof. His counsel may make any objection, as you did on Mr. Gurley, to what you considered was not truthful. He may get up and make the same statement to the Court, and I will pass upon it.

1052 By Mr. Thompson: Well, of course, the deposition is here and they can make their offer of proof from the deposition.

Of course, this narrative, oratorical offer of proof is contrary to all the rules on making an offer of proof, drawing conclusions, filling in the gaps.

By the Court: I have spent a half a day on the offer of proof law this week. I believe it is within the sound discretion of the Court, and only on abuse of discretion would be considered and reviewed by the Court of Appeals.

I think it is fair to have you make the offer of proof on the theories already outlined before. You make them, and if counsel for Mr. Cross wants to challenge the veracity of it, he may make his statement for the record. I am excluding it, not on the style of the offer or—

By Mr. Freeman: The form.

By the Court: Or the form of the offer, but on the one issue. It hasn't any place on this before the jury.

By Mr. Freeman: I just want to make it clear to your Honor that I have not interpolated except where I have specifically mentioned it, and I have not 1053 drawn any conclusions.

By the Court: You haven't. You are within your bounds.

By Mr. Freeman: And I have tried to use the language of the witness in the depositions.

By the Court: Even if you are exceeding the limitations in the offer of proof, the jury is not in the box, and you are reasonably within your bounds and can be challenged by his lawyer. Proceed.

By Mr. Freeman: I would offer to prove through the testimony of Mr. Hugh W. Cross, as he has already testified, that he was appointed Commissioner in April 1949; that he was reappointed in 1951 for a full term ending December 31, 1957;

That in 1955, he was a Commissioner to June 30, and then became Chairman of the Commission on July 1, 1955—

By the Court: Do you want a few minutes time to rest?

By Mr. Freeman: I am all right.

By the Court: You tell me when, and I will recess for five or ten minutes.

By Mr. Freeman: I think I would prefer finishing.

By the Court: All right. Proceed.

1054 By Mr. Freeman: Cross intended to serve out his full term, or at least to serve out his term as chairman;

That the Interstate Commerce Commission, Mr. Cross would testify, has broad powers and general supervision of railroads' rates, service and securities; that there were many matters of great importance involving the six defendant railroads pending before the Interstate Commerce Commission in 1955;

That the chairman is the most important of the Commissioners, and that it is a betrayal of the duty of a commissioner to ask private favors or exert any type of pressure. This is found in the transcript, for your benefit.

That Cross never corresponded with Keeshin; that Cross never visited Keeshin's home except for one visit in the summer of 1955 at Eagle River.

1055 That Keeshin never visited Mr. Cross's home, either in Springfield or in Washington; Mr. Cross previously had never taken any part in any of Mr. Keeshin's business ventures.

That on March 23rd Keeshin called Mr. Cross for an appointment, and they met at the Mayflower Hotel the latter part of March or early April of 1955;

That Mr. Keeshin requested Cross to put in a good word for him with the railroads on the Chicago transfer contract;

That Keeshin asked Cross to help him in securing the transfer contract and to find out the status of negotiations in Chicago;

That there were many long distance telephone calls back and forth between Mr. Cross and Mr. Keeshin concerning the Chicago transfer matter.

That Mr. Keeshin described his proposal to the railroads, to Mr. Cross, and discussed his letter of April 6th, which we will offer later, and told of the progress or lack of progress he was experiencing.

That Mr. Cross was advised of the six railroads on the committee and of the meeting in May. That Cross had talked with railroad presidents, including Mr.
1056 Simpson, Mr. Feucht and Mr. Johnston, and reported the results of these talks with Mr. Simpson and Mr. Feucht to Mr. Keeshin.

That when Mr. Keeshin secured the transfer contract, he called to express appreciation for Cross' help; that Cross in turn called Mr. Simpson and Mr. Capri of the Pennsylvania on June 8 to express his appreciation for their help or, as he said it, Mr. Cross, to say that they had done a good thing in selecting Keeshin.

That after the award of the contract by the railroads he discussed various procedural problems with Mr. Keeshin's attorney, Mr. Goldstein.

That the first contact made by Mr. Cross was with the Baltimore and Ohio Railroad. That he called Mr. Simpson in Baltimore while he was in Baltimore getting a suit at Swarz, but that he found that the tailor was very busy getting out his Easter work, and so he had to get a suit later, that Easter fell on April 10 in 1955.

At this meeting with Mr. Simpson in Baltimore, Mr. Cross made inquiry of the status of the transfer matter, and Simpson stated to Mr. Cross that he did not know anything about it but would inquire and let Cross know.

That in addition to the discussion of the transfer
1057 matter, Cross also discussed with Simpson the Baltimore and Ohio financing which was probably the

biggest financing that any railroad had ever undertaken, Mr. Cross would testify.

He also would say that this financing overshadowed, in his words, everything else, and the Commission still had to take care of a great many details.

That the financing involved the issuance of some three hundred fifty million dollars' worth of railroad securities and resulted in a savings to the Baltimore and Ohio of interest costs of approximately three million dollars per year.

That the Commission had an obligation to protect the public interest in securities presented to it for its approval.

The merits of the issue must go analyzed. Among other problems the question of exemption from competitive bidding, the reasonableness of the interest rates and terms; the prospective proportion of debt and equity securities, the timing of the Commission's approval so that they coincide with underriding requirements of problems involved.

Cross discussed the transfer matter with Simpson on several occasions and inquired about it in phone conservations.

1058 Cross called Simpson on April 18 and asked for for an appointment, which he kept on April 23rd, a Saturday, in Baltimore, Maryland.

Cross also called Simpson on May 13, the same day that he called Mr. Feucht, and thereafter on May 25th Cross called Simpson to find out what were the reactions of the committee that had met on May 19th.

Finally, on June 8 Mr. Cross called Simpson to express his appreciation, and, as he put it, to advise Mr. Simpson that Cross felt that the railroads had done a good thing by selecting Keeshin.

That with respect to Mr. Capri of the Pennsylvania Railroad, Mr. Cross would testify that Capri came to his office several times during the spring and summer of 1955, and Cross called Carpi on the long distance telephone several times and may have discussed this transfer situation with him.

He called Carpi on April 18 to arrange an appointment in Philadelphia. He also called Carpi on April 26, May 12 and June 8. Mr. Carpi called Cross on the long distance telephone during this period.

That with respect to Mr. Cross' contact with the 1059 western railroads Mr. Cross called Feucht on May 13 and said he was very much interested in seeing that Keeshin got the transfer contract. Mr. Cross has admitted that any such expression would be the application of official pressure on the railroads.

On April 29, President Johnston of the Illinois Central came to his office in Washington, while he was there for an AAR meeting, and asked Cross about his purported intention to take a job with Keeshin if Keeshin got the transfer contract.

Mr. Cross discussed the Keeshin negotiations for the Chicago transfer contract with Mr. Wayne Johnston on more than one occasion. Mr. Cross would testify, however, that the meeting with Mr. Wayne Johnston occurred some time in July of 1955; that Mr. Johnston had told Mr. Cross that his friend Keeshin should go out and get the airporter service in Chicago, because the railroads were losing business, and the airlines were coming into prominence.

In conection with that he facetiously said to Mr. Cross, "Why don't you get your friend Keeshin to give you a job with the combined company?"

That on May 25 Cross discovered that the three 1060 western railroads had expresed a preference for Parmelee and, accordingly, sent three telegrams to

the presidents of each of the three railroads, namely, Mr. Gurley of the Santa Fe, Mr. Wayne Johnston of the Illinois Central, and Mr. Feucht of the North Western.

These telegrams advised the receiver that Mr. Cross expected to be in Chicago from May 31 to June 2nd at which time he would call and hoped he might have a short chat.

On May 26 Mr. Cross left Washington and went to Jerseyville for the Decoration weekend and arrived in Chicago the evening of May 31 at 10:50 p.m., and registered at the Union League Club.

Mr. Cross explains that the telegrams were sent because there was to be a bell ceremony in Washington, D.C., at which they were to dedicate an old steam locomotive bell, and that since Mr. Cross was invited to that ceremony, as well as several other friends of his, that he sent these telegrams to advise his friends that he would not be present at the bell ceremony.

1061 Mr. Cross would also testify, however, that the bell ceremony was May 26, while the telegrams provide for his presence in Chicago May 31st to June the 2nd.

I would like to have marked for the purpose of identification as—and I would offer it through Mr. Cross—this registration at the Union League Club of Hugh Cross from May 31 to June 3, 1955; and I would like to have this marked as Plaintiff's Exhibit No. 51, for identification.

(Thereupon said document was marked Plaintiff's Exhibit No. 51 for identification.)

By Mr. Owens: I am objecting, of course.

By Mr. Freeman: I will offer them all at once. Let me mark them.

Mr. Cross would testify, if permitted, that the signature on the registration card which has been identified as Plaintiff's Exhibit 51 is his signature, and that he was at the Union League Club for the period of time there involved.

That on June 1, 1955 Mr. Cross tried to call President Feucht at the North Western Railroad at 9:00 o'clock a.m., but he did not find him in and instead left his telephone number; that on June 2nd, Nye Morehouse
1062 called Mr. Cross and said he wanted to come over to talk to him for a short while and renew acquaintances; that Mr. Morehouse came over to the Union League Club and met in Mr. Cross' bedroom and discussed the transcontinental class rate cases, which, Mr. Cross testified, were very controversial matters pending before the Interstate Commerce Commission.

That Mr. Cross visited President Johnston of the Illinois Central in Chicago on the afternoon of either June 1st or June 2nd.

That Mr. Cross met with Mr. Keeshin on June 1st and had lunch with him at the Union League Club; that all of Mr. Cross' long distance telephone calls, either to Mr. Keeshin or to Mr. Simpson or to Mr. Carpi or to Mr. Feucht of the North Western, and all of the telegrams that he sent, were charged to his home phone, and all of his travels to Baltimore, Philadelphia and Chicago were paid for by himself, since they involved personal matters and not official business.

That the telephone calls at the Interstate Commerce Commission were placed by Cross himself; that by not charging calls to the Interstate Commerce Commission, Cross did not have to certify that they were on
1063 official business, and no records of calls would be maintained.

That Mr. Cross, however, testified that the reason he

charged these telephone calls and telegrams to his home phone was because the money at the Interstate Commerce Commission was running short, and there was a very firm policy that either the calls were to be made collect or were to be absorbed by the employee or Commissioner himself.

That Cross denies that he received an offer from Keeshin to become associated with the Keeshin company in the event that Keeshin were to secure the transfer contract and says, "I deny this, because there was no definite commitment."

That on June 29 Cross came to Chicago and registered at the Union League Club, and he would identify his registration from June 28 to June 30, 1955; and I will mark this registration slip as Plaintiff's Exhibit No. 52.

(Thereupon said document was marked Plaintiff's Exhibit No. 52 for identification.)

That he did come to Chicago for the purpose of looking for a house in the Chicago area in which he could live; that he called his wife with respect to this house
1064 from Chicago on June 30th; that he called his real estate broker, Mr. Wilbur, from Washington,
D.C. on July 1 and advised him that he would buy the house.

1065 That he received the contract of purchase of this house in a communication under date of July 8, 1955, and I want to identify this transmittal letter of Plaintiff's Exhibit No. 53, a letter from Clarence W. Diver to Mr. Hugh W. Cross, dated July 8, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit No. 53 for identification.)

That Mr. Cross returned the contract of purchase under date of July 10, 1955, and in his letter of trans-

mittal enclosing two copies, Mr. Cross pointed out, "Please treat this matter in confidence and withhold the use of my name."

I would like to have this letter marked, for the purpose of identification, as Plaintiff's Exhibit No. 54. It consists of a handwritten letter from Hugh W. Cross to Mr. Diver dated July 10, 1955.

(Thereupon the said document was marked Plaintiff's Exhibit No. 54 for identification.)

I might say to your Honor in this connection our proof with respect to the house goes beyond the deposition, because the witness was directed not to answer
1066 any questions. This proof would be made by the witness in person.

I want to also mark for the purpose of identification as Plaintiff's Exhibit No. 55, this four-page articles of agreement dated July 11, 1955, and signed by Hugh W. Cross, his wife Helen M. Cross and the seller, Margaret K. Erickson.

(Thereupon the said document was marked Plaintiff's Exhibit No. 55 for identification.)

That Mr. Cross would testify when he received these articles of agreement he inserted a new paragraph, 4-A, reading as follows:

"Possession to be given the buyer on September 15, 1955."

That was with the notation that this was inserted before signing his initials and his wife's initials, and Mrs. Erickson's initials, and Mr. Cross would testify he had called Mrs. Erickson in order to make this arrangement before he was willing to sign the agreement.

I would also like to have marked for the purpose of identification as Plaintiff's Exhibit No. 56, this exclusive

listing, both the front and the back of the card of 1067 the card of a house in North Sumner, Maryland.

(Thereupon the said document was marked Plaintiff's Exhibit No. 56 for identification.)

That Exhibit 56 would be identified by Mr. Cross as containing his signature and providing for an exclusive listing on July 11, 1955, the same date as the execution of the articles of agreement for the purchase of the Deerfield house, an exclusive listing of his home in Maryland at 4924 Fort Sumner Drive.

This exclusive listing lists Mr. Cross' home telephone number as OLiver 2-6019.

That Mr. Cross would testify that he had instructed Mr. Wilbur some time in July to secure an architect and go out to this home, to this house in Deerfield that he had executed an agreement of purchase on in order to design a room for a maid for Mr. and Mrs. Cross.

That he visited Chicago in August, 1955, with his wife, in order to review and inspect the house that he had agreed to purchase.

That he wrote a letter to Mr. Diver on July 24, advising Mr. Diver that he intended to be in Chicago about August 7 to 10 and "spend some time at the house 1068 that I bargained for so hurridely."

I ask that this letter, which is in Mr. Cross' handwriting, dated July 24, 1955, be marked for the purpose of identification as Plaintiff's Exhibit No. 57.

(Thereupon the said document was marked Plaintiff's Exhibit No. 57 for identification.)

That pursuant to this notification, Mr. Cross did come to Chicago with his wife and registered at the Union League Club as Hugh W. Cross and Mrs. Cross, registered in on August 7 at 4:57 p.m. and stayed until August

11 at 7:43 a.m. and I ask that this registration card, which would be identified by Mr. Cross as containing his signature, be marked for the purpose of identification as Plaintiff's Exhibit No. 58.

1069 (Thereupon said document was marked as Plaintiff's Exhibit No. 58 for identification.)

By the Court: All these documents may be so marked.

By Mr. Freeman: That Mr. Cross on July 27 sent to Mr. Diver a deposit of $4,500 covering the earnest money payment under the purchase contract for the Deerfield property, and here again the letter of transmittal is written in Mr. Cross' personal handwriting and dated July 27, and I ask that it be identified as Plaintiff's Exhibit No. 59.

By the Court: It may be so identified, and marked.

(Thereupon said document was marked as Plaintiff's Exhibit No. 59 for identification.)

By the Court: Let the record show that all the document's offered in evidence under the offer of proof may be marked for identification.

By Mr. Freeman: That a Senate investigation of Mr. Cross' conduct in connection with the Chicago transfer matter was instituted sometime in the middle of September, and that on November 4, Mr. Cross was served with a subpoena to appear before a Senate Committee on November 15.

That during the months of October and November
1070 Mr. Cross had telephone communications and personal visits with Mr. Morris Forgash, president of the United States Freight Company, and that Mr. Forgash came to Chicago to arrange for the disposition of the Cross house in November, 1955, while Mr. Cross was being subjected to questioning by the Senate Committee.

Mr. Cross would so testify that on November 19 Mr. Cross executed—

By Mr. Thompson: If the Court please—

By Mr. Freeman: Let me finish this sentence.

—that Mr. Cross executed documents transferring his interest in this property to his broker, Mr. Albert A. Wilbur.

I would like to have this November 18 document marked, for the purpose of identification, as Plaintiff's Exhibit No. 60.

(Thereupon said document was marked as Plaintiff's Exhibit No. 60 for identification.)

In that connection, another document also dated November 18, 1955, dealing with personal property, signed by both Mr. Cross and his wife, and I would like to have that marked as Plaintiff's Exhibit No. 61, for identification.

1071 (Thereupon said document was marked as Plaintiff's Exhibit No. 61 for identification.)

By Mr. Thompson: If the Court please we have refrained from interrupting, because we have already made our protest time and time again with respect to this form and character of offer of proof, but we cannot let this pass without interrupting these alleged statements of fact which, so far as we are advised, have no basis in fact, and Mr. Cross will not testify, as far as I have ever heard, that Mr. Forgash came out to Chicago to help him get rid of the house.

I don't know what the premise is for any such assertion to the Court, and to put it into the record is, of course, very prejudicial.

By Mr. Freeman: Do you want me to do it through Forgash, too?

By the Court: Proceed, Judge.

By Mr. Thompson: In addition to that statement, to that misstatement of facts, another one that is strinkingly false and is not made in good faith is that Mr. Cross knew that the three Chicago railroads, through subordinates, had recommended that the contract remain with

Parmelee and there is no evidence of any character
1072 that Mr. Cross knew any such thing.

There are a number of other statements of that character. Our objection is that this farce of making an offer of proof in this form and by this method ought to be stopped.

We are getting into this record, and it doesn't make any difference if the Court strikes it, as it is still there, I assume, and I don't know how you are going to physically eliminate it and not have it in the record that is going up to the court of review, which they keep threatening is where it is going to—

1073 By Mr. Freeman: We are not threatening.

By Mr. Thompson: And that being true, of course, it is there as a statement of an offer of proof. When we object to this offer of proof, I suppose it is a demurrer to the evidence in a fashion. In other words, you tentatively in effect perhaps admit that he is making an honest offer of proof, but we are saying to the Court that if he proved these things it wouldn't make the case; and that isn't the kind of an objection we are making.

We are not demurring to this stuff as being just irrelevant and immaterial, because some of it is relevant and material to some issues, but it is a long speech filled with conclusions and deductions and inferences and innuendoes linked together by argumentative statements of what Mr. Cross would testify to allegedly, and what somebody else might also testify to, as Mr. Freeman has just now said, that he expects to get this from Mr. Forgash.

By Mr. Freeman: No; all of this is from Mr. Cross' testimony.

By Mr. Thompson: Mr. Cross made no such statement, and you know it.

By Mr. Freeman: If you will let me go on, I am
1074 trying to adhere to the facts as they have already been developed.

By Mr. Thompson: All right. Now then, he has said Mr. Cross will make some statements. Mr. Cross has been in the courtroom all week, and Mr. Cross was excused less than a half hour ago so he might go to Jerseyville over the week end, it being unnecessary to have any of the defendants or the witnesses here for the balance of the day.

We didn't know, of course, there was going to be all of this speech made in Mr. Cross' absence, and if they expect to have Mr. Cross testify to these things on Monday when he is called back to the stand, there certainly is gross misconduct to make an offer of proof of what they expect to have Mr. Cross testify to on Monday.

He is going to be here, and he is going to testify, and he is not going to testify to the things they are saying he is, and we think this is so highly prejudicial to the defendants.

If we could put in the proof to meet all of this, we wouldn't have any concern about it at all, because just none of it is so.

When we have this offer and we have to move to strike it out on any old ground, I suppose it could be argued
1075 somewhere that we are demurring to the evidence, that it wouldn't establish the case if it were received. That isn't the basis of our motion at all.

By the Court: If Mr. Cross were called today or Monday or Tuesday or Friday, I would keep it out of the testimony of the defendants as well as the testimony of the plaintiff, and I am the one who is barring it from the

record, and the plaintiff is not demurring to it, I mean the defendants, and they are not bound by any admissions or denials.

It is the Court that is doing it without any demurrer on the plaintiff's, on the defendants' part.

By Mr. Freeman: Mr. Cross—

By the Court: Pardon me. Let me finish, for the record. I do not believe that it is prejudicial to the record. I would like to say at this time that I presume this case will go up either way, plaintiff or defendants, and I am going on that theory.

I am not inviting it, but I presume it is important enough that it will go up, and I am watching the record as
1076 best I know how, and I cannot agree with Judge Thompson that they are in any way bound by it, and if they are I want to make it clear that I am not considering it in any way as not admissible or improper or should not be offered if and when we reach the proper issues.

1077 I am only excluding it as improper, incompetent and immaterial on the issue of public injury, and it is binding on no one, and I am striking it from the record as though it had not been offered, and it can't possibly be, in my judgment, as a matter of law, be effective in any way, and the jury is not in the box.

Again I want to say if and when it does go up, I know Judge Thompson is shaking his head, and I know he is an old timer, and he doesn't agree with me, and I expect no agreement, as I expect to rule as I see it, but if it does go up I want the Court of Appeals to look at the record and to see what I excluded that was improper and not to guess that I excluded something without knowing what it was about.

The objection will be sustained, and the offer will be stricken so far.

Proceed.

By Mr. Freeman: That Mr. Cross will testify and has testified that he did discuss the transfer matter with Mr. Forgash, that he did have telephone calls back and forth, that he doesn't recall receiving advice from Forgas to call

vice-president Carpi of the Pennsylvania and presi-1078 dent Simpson, that he did know that the New York

Central owned 45 per cent of U.S. Freight Company with which Mr. Forgash was associated, that Mr. Cross did testify—

By the Court: I will give you a five-minute recess.

By Mr. Freeman: I will be through in five or ten minutes.

By the Court: All right.

By Mr. Freeman: If you are not tired, I can go on.

By the Court: The lawyers have been here since 2:00 o'clock.

By Mr. Freeman: Maybe I can finish, and then we can recess.

By the Court: All right, you go ahead.

By Mr. Freeman: That Mr. Cross has testified—

By Mr. Thompson: I am tired, but not physically tired.

By the Court: Beg pardon?

By Mr. Thompson: I am tired, but not physically tired.

By the Court: All right.

By Mr. Freeman: That Mr. Cross has testified—

By the Court: I am tired physically, mentally and otherwise.

By Mr. Freeman: I am exuberantly happy and fresh.

1079 By the Court: I don't mean of this case. I mean I have been on the go every minute, every evening, and this morning I had a special function.

Proceed, and I am listening with attention and with due consideration.

1080 By Mr. Freeman: Thank you, your Honor.

That Mr. Cross has testified that he purchased the Deerfield house for his daughter to give her her start when she got married; that his daughter was married in 1954, that in 1955 she lived with her husband in Germany, that she came back to the United States in the summer of 1956 and she moved to Massachusetts.

Mr. Cross further testified that his daughter saw the house in the summer of 1956, and determined to live in the East, so he sold the house; that Cross had moved into this house in Deerfield, Illinois, in December 1955, after having resigned from the Interstate Commerce Commission on November 23, pursuant to the investigation of his conduct by the Senate Investigation Committee, known as the McClellan Committee;

That Mr. Cross resigned—

By Mr. Thompson: If the Court please, there is nothing of the kind.

By Mr. Freeman: (Continuing) That Mr. Cross resigned in order to avoid a public hearing. As a matter of fact, this has been admitted in the pleadings;

That he moved to his house, as I say, in Deer-
1081 field in December 1955, and put it up for sale prior to May 1956, and had agreed to sell it to Mr. M. E. Kline, who was then the coal sales manager of the Pennsylvania Railroad on May 22, 1956, before his daughter even returned from Germany;

That Mr. M. E. Kline gave Cross a deposit of $1,000 as earnest money to seal the deal, and did buy the house in July 1956; that Mr. Cross or his family owned his home in Washington; that he sold it in order to purchase the Deerfield house; that he had a home in Jerseyville which had been owned by his father before him; that his son occupied that house, but paid rent to his father, Hugh W. Cross, for that privilege.

That Mr. Keeshin sought help from Mr. Cross in other projects pending before the Interstate Commerce Commission, including an application for temporary authority submitted by the C. A. Conklin Truck Lines as well as protection against investigations impending with respect to the safety of operation of the Conklin Truck Lines;

That with respect to Mr. Carpi of the Pennsylvania Railroad, Mr. Cross had several telephone calls back and forth in the spring and summer of 1955; that the 1082 transfer subject was mentioned; that he did not recall mentioning Keeshin;

That the calls were charged to his home phone, and that he did visit Mr. Carpi in Philadelphia some time the latter part of April.

That Mr. Cross testified in connection with his visit to Baltimore to see Mr. Simpson that one of his reasons or principal reason for going there was to see the wood paneling and the fine old building in which the Baltimore and Ohio had its headquarters.

That while Mr. Morehouse did come over on June 1st or 2nd to discuss the class rates and division matters, Mr. Cross also testified that he never discussed these matters with anyone because they were highly controversial;

That he knew Mr. Wayne Johnston of the Illinois Central for a great number of years as a personal friend;

That when Keeshin first contacted Cross, he advised Cross that the U. S. Freight Lines, the Lasham Cartage subsidiary, was about to buy thirty International Harvester tractors, and he would arrange to have them bought at the Carrollton Farm Supply agency run by Cross' son;

That arrangements were made for an override of 1083 $150 per tractor or $4,500; that this $4,500 was used as earnest money on the purchase of the Deerfield house—

By Mr. Thompson: Now, do you mean to represent to the Court that Cross is going to testify to that?

By Mr. Freeman: Yes, he is going to so testify.

1084 By Mr. Thompson: How can I stand here and dispute in court room language what is being said now—

By Mr. Freeman: Your Honor, he doesn't have to. Let him give us Cross for a half a day, and we will prove more than that. It is a question of interrogation of a hostile witness. I mean, what I have said to you, your Honor, 98 per cent of everything I said is fortified by the exact language that Mr. Cross has already employed under oath, and with respect to the other 2 per cent, and this is in that category—

By Mr. Thompson: Which is a vicious falsehood.

By Mr. Freeman: We undertake to prove that, and it is not a vicious falsehood.

It was just a plain, ordinary pay-off, and we will prove it, if you give us a chance.

By Mr. Thompson: Just a vicious falsehood with not the slightest, not even a suspicion to base it on, and he is making it as an offer of proof, with a witness available and taken off the stand by him. The witness would be available for him to put these questions to him, and now he is saying that this will be testified to by Mr. Cross with no basis on earth for it.

By Mr. Freeman: Will you let me put the ques-

1085 tions to the witness?

By Mr. Thompson: I will not let you make a speech to the witness and keep silent. You are going to make a vicious speech to the witness just as you are making now,—

By Mr. Freeman: No, I can prove it.

By Mr. Thompson: (Continuing) and ask the witness is it so, and he will deny it vociferously.

By Mr. Freeman: You know it is true.

By Mr. Thompson: I don't know anything about you that is respectable or even that I want to be in the court room with you if I can avoid it.

By Mr. Freeman: You can leave any time.

By Mr. McConnell: I move to strike that out.

By the Court: All right, gentlemen. The jury is not in the box.

Are you through with the offer?

By Mr. Freeman: No, your Honor, but I deeply resent this remark by Mr. Thompson, and I think he should be castigated.

By the Court: I think it is uncalled for to be abusive to any counsel, plaintiff or defendant, and I so request counsel to refrain from doing it.

If it is improper, if it is untruthful, all you have got to say is that the witness will not so testify.

1086 By Mr. Freeman: How does he know?

By the Court: And if and when the issue comes properly before the Court and jury, it will be given all the consideration, but whether Mr. Hugh Cross is in the court room or not, I will not permit him to admit it or deny it.

Proceed with your offer.

By Mr. Freeman: I would say just in part here that we do have documentary evidence with respect to this which we will present in addition as we go along.

By the Court: Counsel, all I can say is this: I am not trying that issue.

By Mr. Freeman: That is right.

By the Court: I have limited the issue. I have explained it. I have repeated it. I have emphasized it. And all I can say is that there is no room in this court room for name-calling, for abuse.

We are just making a complete record for either side to go up on should the occasion present itself, and I don't

believe that any such offer of proof will be considered by the court as proof except in the light of what I excluded. That is all.

By Mr. Freeman: I think the record is clear on the number of instances of abuse that have occurred
1087 against me personally, and it doesn't bother me except that I do feel that I am in a Federal institution which has dignity and is entitled to respect, and I try to give it.

By the Court: I also feel that I am in the same institution, and that I have taken abuse and I have forgotten it. Now let's go on.

By Mr. Freeman: I will continue to try my lawsuit.

By the Court: Proceed.

By Mr. Freeman: Maybe we can take a five minute recess?

By the Court: All right. At least, we may cool off.

(Thereupon a brief recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

1088 By the Court: All right, proceed. Do you want to go to 4:30 or 5:00 o'clock?

By Mr. Freeman: I think I will be through by 4:30.

By the Court: It all depends on what you have.

By Mr. Freeman: I will be through with this offer by then.

By the Court: All right, we will recess then because I am pretty tired.

By Mr. Freeman: Thank you. I am, too.

That Mr. Cross did have private conversations at which he expressed personal interest in seeing that Keeshin get the transfer contract with these various presidents, the Baltimore and Ohio, Illinois Central, Chicago and North

Western, and the vice president of the Pennsylvania Railroad, but that after these private conferences he continued to act on cases presented to the Interstate Commerce Commission for decision involving those railroads as well as the other defendant railroads constituting the six defendant railroads;

That Cross was subject to a Senate investigation of his conduct with a view to determining whether there was a possible violation of the conflicts of interest statute;

1089 That he admitted that he had been indiscreet, and that an executive session of this Senate committee occurred on November 15, and he resigned his chairmanship of the Interstate Commerce Commission on November 23 to avoid a public hearing.

I would like to—

By Mr. Thompson: Now, if the Court please, Mr. Cross will never testify to any such thing. We challenge the good faith of every statement he has made since he has returned after the recess.

By Mr. Freeman: Just as an aside, for Mr. Thompson's benefit, this noble individual who is so difficult at times, in Paragraph 33(m) we allege, "On November 23 defendant Cross resigned his position as chairman of the Commission as a result of an investigation of his conduct by the United States Senate Committee on Government Operations, permanent subcommittee on investigations, and prior to the announced institution of public hearings by said subcommittee."

That statement is admitted by these counsel, including the great Mr. Thompson.

We go on in this allegation with a second sentence, "Such resignation was for the purpose of concealing the terms of the conspiracy."

1090 That sentence is denied.

So it isn't really a matter of proof. It is already conceded in this record.

Now, your Honor, I would like to have marked for the purpose of identification as Plaintiff's Exhibit 62, the transcript of hearings before the Senate Subcommittee on Investigations, dated November 15, 1955, and as Plaintiff's Exhibit 63, Pages 28 through 34 of the annual report of that committee, identified as Report No. 1444 of the Senate, 84th Congress, Second Session, dated July 25, 1956.

(Thereupon the said documents were marked Plaintiff's Exhibit No. 62 for identification, and Plaintiff's Exhibit No. 63 for identification.)

By Mr. Freeman: With respect to the identification, I will make an offer of all these documents that have been identified under Mr. Cross from 51 through 63.

With respect to Plaintiff's identified Exhibits 62, I offer this as admissions against interest in the case of Cross from Pages 56 to 81; in the case of defendant Kee-
1091 shin from Pages 27 to 55; in the case of defendant Johnston from Pages 17 to 22; in the case of defendant Feucht from Pages 2 to 17; in the case of defendant Simpson, his affidavit on Page 22; in the case of defendant Gurley, his affidavit on Page 23.

There are materials in this offer and in the admissions therein made which bear upon the circumscribed issue of public injury as you have defined it.

By the Court: You say they have?

By Mr. Freeman: There is testimony dealing with the comparison of Keeshin versus Parmelee.

By the Court: Those items I do not intend to exclude in a blanket exclusion.

By Mr. Freeman: I understand.

By the Court: I want you to reserve the right to offer it to me in proper from subject to objection, and I will consider it.

By Mr. Freeman: Very good.

By the Court: I am only passing at this time upon what you call admissions against interest on the element of conspiracy and as to those I am going to rule. As to the others I haven't had a chance to check them,

but if you will point out to the Court any time
1092 during the proceeding any other documents, if they

are admissible—I don't know the admissibility or impropriety or any phase of it—I will consider it in due time. I don't want it to be included in my exclusion

at this time.

1093 By Mr. Freeman: Very well. I understand your

Honor's ruling and I will bring—

By the Court: That goes to all documents I am passing on because I do not propose to blanket-exclude anything that properly belongs to the issue before me.

All right. Judge Thompson?

Are you through, Mr. Freeman?

By Mr. Freeman: Yes, your Honor, that is all I have on Mr. Cross.

By Mr. Thompson: I just want to call attention to what is already before the Court, and I ought not to be obliged to do it but apparantly, we are.

As to the answer of the defendant, paragraph 33.

"They deny the allegations and each of them of paragraph 33 except as hereinafter stated."

Then coming down to sub-paragraph M,

"They admit that on November 23, 1955, defendant Cross resigned his position with the Interstate Commerce Commission."

Without limiting the denial, they specifically deny that

such resignation was for the purpose of concealing
1094 the non-existing alleged conspiracy.

By Mr. Freeman: That is correct. I interpret it the way I indicated to your Honor.

By Mr. Meserow: If the Court please on behalf of my clients, I want to make an objection to the offer of proof because it is beyond the scope of the issues, and in addition the offer was full of conclusions and falsehoods, charges, and offers were made with respect to my client—

By the Court: Mr. Meserow, when Judge Thompson made the objections on the same grounds, and I sustained the objection and I struck it from the record, I excluded them for all defendants and all purposes on all the grounds.

If you have got a new ground, I will hear it, but we don't want to be—

By Mr. Meserow: I don't want to take your time, but just to point out one falsehood, he said we admitted the allegation of 33-M, and in our answer, the same as Judge Thompson's, we denied it.

By Mr. Freeman: No—well, the same as Judge Thompson, if that is a denial.

By the Court: That goes for Mr. Hugh Cross and Mr. Owens.

By Mr. Owens: Your Honor, I don't recall the 1095 offer of all the documents.

By Mr. Freeman: You are right, Mr. Owens. I think I offered them, but I did it in too casual a way.

I would like to offer in evidence those document that have been previously identified.

By the Court: They may be considered as having been offered in evidence and rejected.

By Mr. Owens: Of course, I also challenge the truth of the numerous statements made in the offer of proof.

By the Court: You second the motion of Judge Thompson?

By Mr. Meserow: He thirds it. I seconded it.

By Mr. Owens: I don't want to limit myself to just

the statements Judge Thompson made. There are many statements which I consider falsehoods, and if the Court would meet me to go through the record and point them out, I could do that, but I would like to make a blanket objection to it.

1096 By the Court: How could I possibly do that, exclude it for the plaintiff and for the defendant? All right.

By Mr. Thompson: All I was going to suggest was at the time you ruled on my motion, he hadn't quite finished that tirade, and I want to have it applied to all of it.

By the Court: All of it has been objected to, sustained and stricken.

By Mr. Freeman: Your Honor, I resent the use of the word "tirade". I would like Mr. Thompson, with all of his dignity and greatness, to be admonished. I feel that I have a standing in this court that equals his in any form.

By the Court: You have a fine standing in this court, and I was going to say that while you have been criticized for exaggerating your client's point of view, I have been equally attacked only for what I think is the law, so we will admonish all of ourselves for being that heated in the matter.

We are trying a lawsuit, and believe me, it is an important lawsuit. I have an important issue involved here. I want to stand by my guns, and I will follow my rulings in the same pattern as I have held all week.

1097 I will finish it that way, and gentlemen, have a nice week end.

By Mr. Freeman: I would like to make a demand on Mr. Keating to bring to this court some time next week Mr. Morris Forgash who was the president of the United States Freight Lines in 1955. This company was

controlled by the New York Central through the Linden Securities Company, a wholly-owned subsidiary, and therefore Mr. Forgash is a managing agent of the New York Central, and I would like to see him produced.

By Mr. Keating: I certainly object to the demand of counsel. I believe even Mr. Freeman stated there was some sort of a stock tie-up of some forty percent—

By Mr. Freeman: Forty-five percent.

By Mr. Keating: In some chain, one of which was Linden Securities, which was a holding company or some investment of the New York Central.

It is my understanding that the New York Central some years ago, in 1955 or 1956, disposed of all of that stock. Obviously, Mr. Forgash is not a managing agent or any kind of an agent of the New York Central, and I resent the implication that he is any kind of an agent.

1098 By Mr. Freeman: I don't know why everybody resents an implication.

You may rule on it as you see it, but the facts are these, and I think Mr. Keating will agree with me.

By the Court: If counsel says he will not produce him, because he is not the agent of the New York Central, and we are on trial, I cannot order him to do anything that he can't, and that is it.

By Mr. Keating: I represent to the Court that I have no control, directly or indirectly, over Mr. Forgash.

By Mr. Freeman: And I take you at your word.

By the Court: I cannot order you to produce him, then. Have a nice week end. Ten-thirty Monday morning.

(Whereupon, a adjournment was taken until Monday, May 2, 1960, at the hour of 10:30 o'clock, a.m.)

1099 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Monday, May 2, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

1100 Present (Continued):

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1101 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company *v.* John L. Keeshin, et al. Case on trial.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury.)

By Mr. Thompson: Your Honor expressed some interest in my objection that the offer of proof that was made at the close of the session on Friday was not made in good faith.

By the Court: I did what? I expressed some interest, you say?

By Mr. Thompson: Yes, in my suggestion, and indicated that you would like to have some authority on the subject of what the course is where an offer is not made in good faith.

In Central Pacific Railroad *v.* California, 162 U.S., 91 —

By the Court: May I have that again, please?

By Mr. Thompson: Central Pacific Railroad *v.* California, 162 U.S., 91, page 117, the Supreme Court of the United States said:

> "Offers of proof must be offers of relevant proof, specific, not so broad as to embrace irrelevant and immaterial matter, and made in good faith."

Another United States Supreme Court case, the Scotland County *v.* Hill, 112 U.S., 183, at 186, the Court dismissed the requirement of good faith, and there it referred to a Tennessee case, a Maryland case, and said:

> "Those cases do undoubtedly hold that error cannot be assigned on such a ruling unless it appears that the offer was made in good faith, and this is in reality all they do decide.
>
> If the trial court has doubt about the good faith of an offer of testimony, it can insist on the production of the witness and upon some attempt to make the proof before it rejects the offer, but if it does reject it and allows a bill of exceptions which shows the offer was actually made and refused, and there is nothing else in the record to indicate bad faith, the appellate court must assume that the proof could have been made and govern itself accordingly."

1103 In the Maryland case, which is Schbach *v.* Hurtt, 47 Maryland 61 at Page 66, which is a case cited by the Supreme Court in 112 U.S., the Maryland Court said:

> "It was not competent for him simply to make an offer of proof which he had no witness to sustain and insist upon the Court deciding the questions which that offer raised, for that would be invoking from the court below and from this court a decision upon a mere moot question. If such a practice were allowed, it would be quite possible for a party without having any witnesses at all to the point, to raise any controverted or difficult question as to the admissibility of evidence which the cause on trial admitted of and obtain a reversal of the judgment against him if the court below should, in the opinion of this court, have ruled erroneously on such a question."

1104 Now we have challenged the good faith of some of these statements that were made here on Friday, and made them specific in that the representation that Mr. Cross would testify if permitted to be examined on the subject to certain representations of fact, and we pointed out that there was no evidence in the depositions before trial to support any such statement, and that we had no knowledge of any inclination on the part of Mr. Cross to make any such statements, and that we had no knowledge that there were any such facts as has been represented here as facts.

Among them, of course, was the representation that the $4,500 profit which Hugh E. Cross or the Carrollton Implement Company made on the truck transaction was the $4,500 which Hugh W. Cross used in making the down payment on the Deerfield property; and the further representation that this was nothing but a pay-off through Forgash.

Of course, there is no such evidence. In fact, the evidence is directly to the contrary, that Mr. Hugh W. Cross had no connection whatsoever with that transaction.

There was also the representation made of other
1105 facts which we pointed out were false, and that Mr. Cross would not testify to any such thing.

We think that is a challenge of the good faith of the offer which puts on the plaintiff the burden of producing the witness and showing that what the attorney said here was true, that Mr. Cross would so testify.

That, of course, is nothing but an offer of proof, and if they make such an offer of proof by examining Mr. Cross instead of standing up here and representing it without a witness on the stand, then it must be made outside the presence of the jury because it was represented here that Cross would be an adverse witness, and that if they had a half a day's time, they would make him admit these things which were represented to be facts.

Of course, you can picture what is going to happen, and we insist that if they do undertake to show the good faith of their offer by examining Mr. Cross that it must be out of the presence of the jury. We don't want the performance of having Mr. Cross called to the stand while the jury is in the box, and then having the jury sent out, which of course just adds insult to injury in the way this proceeding is being conducted in making these offers of proof which have no basis in fact.

1106 Your Honor hasn't ruled that this offer of proof is rejected on the ground of lack of good faith because your Honor has ruled specifically that this offer of proof is rejected because it does not bear on the issue that is before the Court, which of course is thoroughly sound from your Honor's limitation of issues. Conforming to that limitation of the issue would, of course, call for an omission to make any such offers of proof in

violation of the Court's rule because as these cases say here, the Supreme Court said, "Offers of proof must be offers of relevant proof, specific, not so broad as to embrace irrelevant and immaterial matter and made in good faith."

1107 In other words, those are all conditions of an offer of proof, a proper offer of proof. Now as we have indicated before, I don't know what use will be made, of course, in a record of these offers of proof if the case is reviewed, but we are faced with a situation here which I have never been faced with in my forty-eight years at the bar, and I think your Honor hasn't been faced with many of the problems that are arising here. I must say we are traveling on untested ground. But that doesn't mean we should not follow the normal rules that apply to offers of proof, and they should be confined to relevant matter and material matter, as the Court has limited the issues.

So we have the double objection to this material that it is not relevant to the issue your Honor has carved out of this case, and it isn't made in good faith.

Your Honor has ruled on one of the aspects of this, and that is the immateriality and irrelevancy of it. Where that leaves us on the good faith part, I don't know. But I do say that it is their obligation, if they make representations to the Court which are directly challenged, it seems to me clearly their obligation to support

1108 their offer and show that it is made in good faith, even if it is irrelevant. But all that should be outside the presence of the jury, which is the real point I am making this morning.

By the Court: Judge Thompson, I intend to rule upon all of it at the conclusion of the case, and perhaps by written opinion on all of the facts and issues involved before me.

I cannot amplify what I have said before. As long as counsel advises the Court that it is made, that this offer of proof, regardless of how wide a range it may be from the facts in the depositions or in the offer, as long as he says it has a tendency to prove public injury, that is the only reason upon which I am listening to it. I don't want to go any further than that. My ears are open all the time. I know what is going on — I think I do.

The difficulty is if I open the door by permitting any one witness to take the stand to dispute factually the offer of proof, I am discarding my entire second week of trial on the limited issue.

I reserve it. I am not going to throw it out. I want the Court of Appeals, and as I said it is going up one way or the other, it doesn't make any difference,
1109 I am going to make my position as clear as I know how by a written opinion on all these rules and all that transpired here so there will be no question in the Court's mind and I seek no advantage or disadvantage for either side but want them to follow my rule as I see it, and I want a clearcut case as to whether or not I can invoke, have a right to invoke the separation of issues in the trial of an anti-trust case. That is all.

All right, Judge, if you want me to, I will reserve my ruling for the record on the question just raised before me by these three citations. I think I have known that. These irrelevancies that you are talking about in these three cases, and there are others even more recent than that. Irrelevancy is the point where they are not being offered remotely on any issue, but as long as counsel insists that these are being offered on the issue which I isolated, the public injury, I cannot prejudge it and say to him I will not permit you to do it. You have got to stop it.

So let's proceed with the trial.

By Mr. Thompson: You have made it very clear.

By Mr. McConnell: I just want to say one little thing, if I may.

1110 Good faith is challenged here by Judge Thompson. I didn't bring this case, but I came into it. We haven't done everything in this case except in good faith.

1111 We have a case which we think has merit, and we have brought it, and we have sponsored it, and we don't take one step backwards from our sponsorship of this lawsuit.

We have a quarrel with your Honor which I am not trying to make personal at all. I am trying to make a record here. We can't help it, but sometimes there comes in the lives of lawyers and judges conflicts where there are issues raised, where one side is trying to make a record, and that is what we are trying to do.

By the Court: May I ask one question?

By Mr. McConnell: Yes.

By the Court: Have I stopped you from making your record?

By Mr. McConnell: No.

By the Court: Haven't I sustained you all the way to make the record?

By Mr. McConnell: You are letting us make the record.

By the Court: Absolutely.

By Mr. McConnell: Judge Thompson is attacking our good faith.

By the Court: I have not said it is in bad faith. I think I have defended your position by saying as

1112 long as you are offering it on that label, I have no choice but to accept it, and it is in good faith, and I will tell you why it is in good faith.

It is your honest contention, and I recognize it, that public injury embraces that type of evidence, and I am

in no position at this time to say yes or no, and I want to reserve my ruling until the final adjudication when I will determine that for the record.

As far as the offer of proof is concerned, in that area you are absolutely within your rights.

By Mr. McConnell: All right. The reason I want that in the record is that my good faith has been challenged. I have practiced law in this court for thirty-six years, and nobody has ever proved that I have tried or even alleged it, as far as I know, up to this moment, that I have tried to deceive a Court or to do anything outside the confines of a lawyer's lawful position in a court room.

I have no motive in doing anything else.

By the Court: I want to say this: May I interrupt, please?

There is just one qualification that I am not passing upon. One of the serious charges made by Judge
1113 Thompson, both Friday and today, is addressed, not to the area of proof, but to the stretching of it beyond imagination, far beyond the scope of the transcript of depositions or far beyond any possibility of proof if the witness were on the stand.

That is where you two differ, not on the area.

By Mr. Thompson: That is right.

By the Court: On that score I would like to say this; that I can't pre-judge it as to what he would testify to or how far he would go or how far you can stretch it.

I will not permit him to testify on any phase of it where I destroy my principle. Is that clear?

By Mr. McConnell: Yes. Let me read this to your Honor. I don't know how I can be charged with bad faith, when we argued before Judge Sullivan as to what was public injury and he ruled:

1114 "It is urged that the complaint is fatally defective in that it fails to allege an injury to the public as

opposed to a merely private wrong; and of course such an allegation is required. In the instant case, however, the requirement has been met. The allegation of the elimination of competition for the contract to provide terminal transfer services is itself sufficient."

How can I be charged? You may say I am wrong. You may not agree with me. You may rule against me, which you are doing, but I don't see how Judge Thompson can charge me with bad faith in asserting we are entitled to make an offer of proof within the limitations Judge Sullivan has previously ruled.

By the Court: Haven't I covered it fully?

By Mr. McConnell: Yes, but I want the record to show my answer to him. I didn't want to sit here and listen to him make charges like that, which are as false as can be.

By the Court: I want to say this to Judge Thompson. I certainly don't want any misunderstanding in the record insofar as the defendants are concerned in waiving
1115 any of their rights. If Judge Thompson feels at the conclusion of your offer of proof, that he wants to do likewise in his offer of proof, I shall go equally as far with him as I have with you, and perhaps that may answer any possible fear or apprehension about what the Appellate Court may surmise was in my mind, although I will try to make it so clear, and it is my opinion when I sustain an objection to the offer and proceed to strike it from the record, nobody is bound by it insofar as a new trial is concerned or insofar as sending it back for review is concerned.

By Mr. McConnell: He knows that is the law. He knows it. He has been through it many, many times. He is trying to make a false issue here and get tangled up in something else.

By the Court: I am trying to protect the defendants against any possible, shall I say, apathy or indifference.

By Mr. McConnell: I offered to stipulate on that.

By Mr. Thompson: Your Honor, to shorten this whole thing up—

By the Court: That is a bad word "stipulation" in this case, and let's not go into it any more. I have used the word "stipulation" three or four times respect-
1116 fully and not in any derogatory sense, nor do I know what you were talking about. It was in the absence of the Court, so I can't possibly approve or criticize. I have to stand moot on it.

1117 By Mr. McConnell: My offer was made in the presence of the Court in your chambers.

By the Court: I beg your pardon?

By Mr. McConnell: I offered to shorten this whole thing up.

By the Court: I am talking about where you were excused for one hour to discuss the stipulation. Yes, you offered in my presence to do that, and then you recessed for an hour, and then when you came back Judge Thompson said, "We can't accept it. Let's go to trial."

By Mr. Thompson: If the Court please, I just want to put Mr. McConnell at ease. I have made no challenge, and I think the Court just pointed out the distinction a moment ago, but I have made no challenge of good faith in making their offers of proof on this issue outside of the issue which your Honor has stated.

My challenge of good faith rests solely and only on the representations that were made here on Friday, not by Mr. McConnell that a witness would testify to certain things whereas I know the witness will not testify to it, and all of the record that is now made by deposition shows that the statements were false.

1118 That is my only challenge of good faith, and Mr. McConnell is not guilty of that up to now.

By Mr. Freeman: Your Honor, I am not going to answer that hideous remark. I don't think we need go any further on that.

By the Court: That is right.

By Mr. Freeman: I want to say to your Honor that I believe I have offered the Cross depositions, but I would offer them precisely on the point of good faith.

Cross has already testified under oath, and I think I said it the other day, to 95 per cent of what I had read. The items he had not testified to I specifically pointed out to you.

Some of these items, I mean this Carrollton tractor deal, are to be established by documentary evidence we have put in through Mr. Monaco and that we will put in through Mr. Forgash.

With that [illegible]amentary evidence before us, Mr. Cross would have [illegible] make certain concessions, which he hasn't made yet, [illegible]ause we have not interrogated him about it yet.

Our side has given further considerations to the conduct of these proceedings, and we would like to
1119 shorten it without stipulation. We would like to make various offers of proof in just as digested a form as we can adhering to the facts and making understatements as I have in the case of the Cross representations where they were understatements of the record.

I would like to proceed with that, if I can. If Mr. Thompson has objection to the form of the offer of proof, I will give that consideration when it occurs, but I would like, without the jury present, to see if we can progress this and get it done today or tomorrow. I think possibly we can.

We may want one or two live witnesses.

By the Court: Mr. Freeman, I want to say it again, and I think I have indicated over the objections of the defendants that I have permitted you to make your offer of proof. I want you to make it. I want the record to be complete with it.

I want one issue preserved, and that is the separation of issues without prejudice to the plaintiff or the defendants.

By Mr. Freeman: Your Honor, I want to proceed with the offer.

By Mr. McConnell: May I suggest this: Can't we let the jury go home today and try and get through with all of our case on offers of proof, and then they could come back tomorrow?

1120 By the Court: I thought you might say you wanted to waive the jury and proceed with the whole thing. How long will it take with the offer of proof?

By Mr. McConnell: We should be through with our whole situation today.

By the Court: All right; bring out the jury. Let the record show that the plaintiff — will it be stipulated that the balance of the offer of proof may be had without any witnesses from the witness stand before the jury?

By Mr. Freeman: In most instances we can support it by depositions, and we will offer it that way. For example, one witness I would want to call, but I am willing to waive his presence here, and that is Wayne Johnston, President of the Illinois Central.

He has testified in deposition, and I will not go beyond his testimony in the depositions, so I can proceed that way or proceed in person, and I think Mr. Thompson might waive the necessity of his presence.

By the Court: I would recommend it. I see no objection if it can be stipulated at that point at this time

with all the witnesses having taken the witness stand
1121 already, that the balance of the offer, along the same line, with the same pattern, may be proceeded with without any technical compliance, whatever we call it, procedural requirements.

By Mr. Thompson: I don't think they are technical, and I don't think they are procedural.

By the Court: All right.

By Mr. Thompson: I think they are very much of substance, and that is that the rule provides in so many words what shall be done. Obviously, they don't have to put the live witness on the stand. They can use the deposition. The witness is not present, and they can use the deposition.

By the Court: Do you agree on letting me send the jury home so we can spend the entire day on the offer of proof?

By Mr. Freeman: May we have a recess?

By the Court: If there are occasions presented where you will require it, I will permit you to do it tomorrow morning.

By Mr. Freeman: May we have a recess so they can consult about it?

By the Court: I will give you a ten-minute recess, yes, sir.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1122 By the Court: All right, proceed.

By Mr. Thompson: Your Honor, no one wants to expedite this matter any more than counsel for the defendants.

It has been our position all along that these offers of proof on what we regard as immaterial to the issue that your Honor has defined, and irrelevant to that issue, should be made out of the presence of the jury. Of course,

we have no objection to the jury being excused for the day and these offers being made which we regard as irrelevant and immaterial to the issue. If there is any competent evidence on that issue that ought to be presented, it can be presented to the jury tomorrow.

By the Court: As a matter of fact, Judge Thompson and gentlemen for the plaintiff, I have kept on saying when these offers are made and I exclude them, it is with the understanding I am only excluding that part which is consistent with my ruling, and not anything that may be brought in factually.

Bring out the jury.

Off the record.

(Whereupon a discussion was had outside the record.)

1123 (Thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen, and goodbye. By agreement of counsel and the Court, we are going to spend the entire day on considerations that do not come within your province, and so with our compliments, you may go home. Have a nice day, and please don't discuss this case with anyone, not even among yourselves.

We will see you tomorrow morning at 10:00 o'clock.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right.

By Mr. Freeman: I would first like to offer to prove certain toll slips, telephone calls, made from Cross's home telephone in Maryland and later from Keeshin's various telephones to Cross.

I first offer the deposition of N. Page Worthington, who is the general promotional manager of the Ches-
1124 apeake and Potomac Telephone Company of Maryland, who testified that he was employed for many years and has charge of the toll records maintained by the company;

That the telephone number Oliver 2-6019 is the only telephone number listed under the name of Hugh W. Cross during the period January 1, 1955 and March 26, 1956;

That he is familiar with the telephone records kept by the company and these records are maintained in the regular course of business in order to enable the company to bill its customers.

1125 Mr. Worthington would testify to the type and character of information that is contained on these toll slips, including the fact that the ticket shows the place and the number called, the time of the call, the time that the call is commenced and the time that the call is ended, the party who is being called, if it is a person-to-person call. It would show that the call was made from one telephone number but charged to another.

The toll tickets are the basic records maintained by the company for submitting or preparing the toll statement that comes to the customer's bill each month, and that it is as accurate a record as they can maintain, including the utilization of numerous automatic electronic devices.

I won't bother to try to name those.

That Mr. Worthington identified a series of toll slips running from C&P Exhibit 1 through C&P Exhibit 92. For the purpose of this offer, however, I will restrict myself to the identification through Mr. Worthington's deposition the following toll charges made against the Oliver 2-6109 number in Maryland.

C&P Exhibit 3-E — I believe I will identify these
1126 under one number with a series of letters just to simplify it — which is a call from Hugh Cross' home telephone number to John L. Keeshin on April 6, 1955, at 11:00 o'clock at night, which lasted sixteen minutes. This I will identify as Plaintiff's Exhibit 64-A.

By Mr. Meserow: Excuse me, Mr. Freeman.

If your Honor please, maybe we can shorten this a little bit. Your Honor has already excluded all these so-called long distance telephone calls, the documentary evidence with respect to them. Now we have the additional objection on the ground that they are not relevant to the issue of public injury.

There are quite a few here, I see. Can't we, instead of objecting at the end of this offer and having your Honor strike them, can we have some ruling now to exclude them?

By the Court: You can have a standing objection to all of them, and I will rule upon them when he is through the offer. You will be fully protected.

I might make only one suggestion —

By Mr. Freeman: I won't read them all.

By the Court: Only for brevity, and not for curtailment, if you will say I have here seventy calls, or fifty calls, in the same category.

1127 By Mr. Freeman: I am going to do that. I will identify them, but not as extensively as I have started.

By the Court: That is right.

By Mr. Freeman: You are right. I will abide by your statement.

By the Court: That is for brevity only.

1128 By Mr. Freeman: I would like to put the record straight, however. Your Honor has not ruled these toll slips inadmissible, not in your memorandum. Mr. Meserow is wrong.

Let me start over again, Miss Reporter, and just identify as Plaintiff's Exhibit 64-A, consecutively through the end of the alphabet, these various slips:

Slip previously identified as C&P Exhibit 3-E as Plaintiff's Exhibit 64-A; C&P Exhibit 4 as Plaintiff's 64-B; C&P Exhibit 5 as Plaintiff's 64-C; C&P Exhibit 7 as Plaintiff's 64-D; C&P Exhibit 6 as Plaintiff's Exhibit 64-E; C&P Exhibit 8-B as Plaintiff's Exhibit 64-F; C&P Exhibit 8-D as Plaintiff's Exhibit 64-G; C&P Exhibit 13 as Plaintiff's Exhibit 64-H; C&P Exhibit 14 as Plaintiff's 64-I; C&P Exhibit 16 as Plaintiff's 64-J; C&P Exhibit 17 as Plaintiff's Exhibit 64-K; C&P Exhibit 18 as Plaintiff's Exhibit 64-L; C&P Exhibit 22 as Plaintiff's Exhibit 64-M; C&P Exhibit 23 as Plaintiff's Exhibit 64-N; C&P Exhibit 24 as Plaintiff's Exhibit 64-O; C&P Exhibit 25 as Plaintiff's Exhibit 64-P; C&P Exhibit 26 as Plaintiff's Exhibit 64-Q and C&P Exhibit 26-B as Plaintiff's Exhibit 64-R; C&P Exhibit 27 as Plaintiff's Exhibit 64-S; 1129 C&P Exhibit 28 as Plaintiff's Exhibit 64-T; C&P Exhibit 30 as Plaintiff's Exhibit 64-U; C&P Exhibit 29 as Plaintiff's Exhibit 64-V; C&P Exhibit 31 as Plaintiff's Exhibit 64-W; C&P Exhibit 34 as Plaintiff's Exhibit 64-X; C&P Exhibit 36 as Plaintiff's Exhibit 64-Y; C&P Exhibit 38 as Plaintiff's Exhibit 64-Z; C&P Exhibit 41 as Plaintiff's Exhibit 64-AA; C&P Exhibit 43 as Plaintiff's Exhibit 64-BB; C&P Exhibit 47 as Plaintiff's Exhibit 64-CC; C&P Exhibit 48 as Plaintiff's Exhibit 64-DD; C&P Exhibit 49 as Plaintiff's Exhibit 64-EE; C&P Exhibit 51 as Plaintiff's Exhibit 64-FF; C&P Exhibit 52 as Plaintiff's Exhibit 64-GG; C&P Exhibit 60 as Plaintiff's Exhibit 64-HH; C&P Exhibit 58 as Plaintiff's Exhibit 64-II; C&P Exhibit 61 as Plaintiff's Exhibit 64-JJ; C&P Exhibit 62 as Plaintiff's Exhibit 64-KK; C&P Exhibit 63 as Plaintiff's Exhibit 64-LL; C&P Exhibit 64

as Plaintiff's Exhibit 64-MM; and C&P Exhibit 82 as Plaintiff's Exhibit 64-NN.

(Thereupon said documents were marked, respectively as Plaintiff's Exhibits 64-A through 64-Z and 64-AA through 64-NN, inclusive, for identification.)

By Mr. Freeman: I will offer a summary of these so that we can save time. I offer these exhibits, Plain-
1130 tiff's Exhibits 64-A through 64-NN under Mr. Worthington's deposition.

By Mr. Thompson: I object to the offer of the documents on the ground that there is nothing in the offer that shows that they have any relation to the subject matter of the lawsuit in the first place, and certainly any relation to the issue as the Court has defined it.

By the Court: If these tend to go to the issue of conspiracy, I will sustain the objection.

By Mr. Freeman: They go to the part played by Cross in these negotiations, so I assume that is the issue of conspiracy.

By the Court: I am not objecting to the offer. I merely say on the ruling, if they pertain to the issue of conspiracy, the objection will be sustained.

By Mr. Freeman: I understand.

By Mr. Owens: I make the further objection to these, your Honor, that a proper foundation has not been laid for the introduction of those documents.

By the Court: That objection will be overruled.

By Mr. Freeman: I would also offer to prove through Mr. Benjamin E. Campbell, whose deposition was taken, and who is a supervisor of the Illinois Bell Telephone Company and has complete charge of the records that need to be produced in compliance with legal pro-
1131 cess, that he would testify that he has responded to some 600 or 650 subpoenas, and has produced records of telephone toll charges;

That these records are prepared at the time the call is made, and they are preserved for a period of time and utilized in the regular course of the company's billing for billing purposes against the customer;

That the actual original records were prepared by the company for this purpose and were produced at this deposition.

I would also say that the original toll slips were produced at the Worthington deposition. I have had marked photostats pursuant to an agreement with counsel.

He would further testify that these toll slips indicate person-to-person calls, indicating calls from a named individual to a named person, and they would indicate from what telephone it was made; that in some instances the toll slips are the result of the use of credit cards, and all this information is contained on the toll slip;

That the first series of toll tickets that were identified by Mr. Campbell are identified in a series called Illinois Bell Exhibits 3—and then a series of numbers, 1132 calls either made from or charged to the number ANdover 3-6685, which Mr. Campbell has identified as the number which lists John L. Keeshin as the subscriber.

I would have marked and offered in evidence as Plaintiff's Exhibit 65-A, and the sequence of letters following in the 65 series, the following toll slips that have been previously identified in Mr. Campbell's deposition as Illinois Bell Exhibit 3-1; Illinois Bell Exhibit 3-10 as Plaintiff's Exhibit 65-B; Illinois Bell Exhibit 3-13 as Plaintiff's Exhibit 65-C; Illinois Bell Exhibit 3-25 as Plaintiff's Exhibit 65-D; Illinois Bell Exhibit 3-27 as Plaintiff's Exhibit 65-E; Illinois Bell Exhibit 3-28 as Plaintiff's Exhibit 65-F; Illinois Bell Exhibit 3-29 as Plaintiff's Exhibit 65-G; Illinois Bell Exhibit 3-30 as Plaintiff's Exhibit 65-H; Illinois

Bell Exhibit 3-31 as Plaintiff's Exhibit 65-I; Illinois Bell Exhibit 3-32-A as Plaintiff's Exhibit 65-J; Illinois Bell Exhibit 3-36 as Plaintiff's Exhibit 65-K; Illinois Bell Exhibit 3-37 as Plaintiff's Exhibit 65-L; Illinois Bell Exhibit 3-38 as Plaintiff's Exhibit 65-M; and Illinois Bell 3-55 as Plaintiff's Exhibit 65-N.

(Thereupon the said documents were marked Plaintiff's Exhibits 65-A through 65-N, for identification.)

1133 By Mr. Freeman: I offer Plaintiff's Exhibits 65-A through 65-N through Mr. Campbell.

In addition, Mr. Campbell identified a series of toll tickets that were charged to the number of Forest 9-3450 or -3451, and Mr. Campbell has testified that these numbers were telephones listed or telephone service purchased by John L. Keeshin and listed as his home telephone numbers.

These ticket toll slips have been identified as Illinois Bell Exhibits 4 — then the A and B series, and I would offer them in evidence as Plaintiff's Exhibits 66-A, and the following sequence:

Illinois Bell Exhibit 4-A as Plaintiff's Exhibit 66-A; Illinois Bell Exhibit 4-C as Plaintiff's Exhibit 66-B; Illinois Bell Exhibit 4-D as Plaintiff's Exhibit 66-C; Illinois Bell Exhibit 4-K as Plaintiff's Exhibit 66-D; Illinois Bell Exhibit 4-M as Plaintiff's Exhibit 66-E; Illinois Bell Exhibit 4-O as Plaintiff's Exhibit 66-F; Illinois Bell Exhibit 4-Q as Plaintiff's Exhibit 66-G; Illinois Bell Exhibit 4-S as Plaintiff's Exhibit 66-H; and Illinois Bell Exhibit 4-R as Plaintiff's Exhibit 66-I.

(Thereupon said documents were marked, respectively as Plaintiff's Exhibits 66-A through 66-I, for identification.)

1134 By the Court: Same objection?

By Mr. Thompson: I object to the offer of these telephone slips for the same reason I objected to the others.

By the Court: Same ruling.

By Mr. Freeman: I would also offer in evidence the deposition of Mr. Morris Forgash.

Mr. Morris Forgash testified in his deposition that he is president of the U. S. Freight Company and its subsidiaries, and that it is the largest freight forwarding concern in the United States;

That in 1955, the U. S. Freight Company, 45 per cent of its stock was owned by the New York Central through Linden Securities Company, a wholly owned subsidiary of the New York Central;

That he knew that negotiations on the Chicago transfer subject were going on between Keeshin and the railroads and had spoken to Mr. Keeshin a number of times about it;

That he may have talked to Mr. Carpi, vice-president of the Pennsylvania Railroad, about the negotiations in Chicago, and that he knew Mr. Carpi very well;

That there were various telephone calls made from the number of U. S. Freight Company in New York,
1135 which was Oregon 5-5600 to Carrollton, Illinois and to Jerseyville, Illinois;

That Mr. Forgash testified that all of these calls that were charged to his company's number at Oregon 5-5600 or that sequence were calls that he made to Hugh Cross in that area — this occurred on page 74, Mr. Meserow, of his deposition, and on page 70 of his deposition, if you want to look at it.

Then on page 71 of his deposition —

1136 By Mr. Thompson: If the Court please, if he is going to offer the deposition —

By Mr. Freeman: I hear the remarks again about good faith, and I thought they might just want to look it up. I am almost through—

By Mr. Thompson: If counsel is going to offer the deposition, he doesn't need to recite it orally and then offer the deposition.

By Mr. Freeman: I am offering to prove through Mr. Forgash's deposition these facts. I am assuming that your Honor is not going to allow me to read the deposition before the jury.

By the Court: That is right.

By Mr. Freeman: And on that basis I am making this offer of proof, and nothing further than that.

By the Court: That is correct.

By Mr. Freeman: Mr. Forgash would further testify that he did visit with Mr. Cross at his home in Maryland; that during his visit the subject of the Chicago Transfer situation was brought up; that if the subject of the Chicago Transfer situation was brought up, Jack Keeshin's name certainly was mentioned.

With respect to Mr. Forgash, he would identify in his deposition the following toll slips: As Plaintiff's
1137 Exhibit 67-A, this call from ORegon 5-5600 on April 7 to Carrollton, Illinois; as Plaintiff's Exhibit 67-B; from the same number on May 17 to Carrollton, Illinois—

I must identify these because it is a little difficult to follow without it.

From the same number on June 5 to Jerseyville, as Plaintiff's Exhibit 67-C; as Plaintiff's Exhibit 67-D, from the same number on June 8 to Carrollton, Illinois;

As Plaintiff's Exhibit 67-E from the same number on June 13 to Carrollton, Illinois; the same number on October 23 to Jerseyville as Plaintiff's Exhibit 67-F; the same number on October 24 to Jerseyville as Plaintiff's Exhibit 67-G; as Plaintiff's Exhibit 67-H, call from Wash-

ington but charged to the same number, ORegon 5-5600, on October 27, and two calls to Jerseyville on October 29 and one call to Jerseyville, Illinois; and as Plaintiff's 67-I, calls on October 17 and November 9.

(Thereupon the said documents were marked Plaintiff's Exhibits 67-A through 67-I, for identification.)

By Mr. Freeman: Mr. Forgash would further testify with respect to Plaintiff's Exhibit 67-I for identi-
1138 fication, a toll charge to his home telephone at BU 8-1931, that he was visiting at Mr. Cross' home on October 17 and November 9, and that he used Mr. Cross' telephone while he was there and charged those calls to his home telephone.

1139 These appear as October 17 from Bradley, November 9 from Bradley.

By Mr. Meserow: What year is that?

By Mr. Freeman: All of these slips, excuse me, are 1955.

By Mr. Keating: Mr. Freeman—

By Mr. Freeman: Mr. Keating has very widely pointed out I have used the alphabet to identify these exhibits, and I ran out of the alphabet on Exhibit 64, and after you get to -Z, use -AA and -BB as an identification of the documents.

Then I would offer to prove through the deposition of Mr. Ennis, the auditor of the Sheraton-Carlton Hotel, that Mr. Forgash was registered at the Sheraton-Carlton Hotel on April 15, 1955 and while registered there made a long distance telephone call on that day to Mr. Carpi, vice-president of the Pennsylvania Railroad, in Philadelphia, and this slip has been identified as Ennis Exhibit 3-E, and I offer it here in evidence under Ennis' deposition as Plaintiff's Exhibit No. 68.

(Thereupon said document was marked as Plaintiff's Exhibit No. 68 for identification.)

By Mr. Thompson: Same objection. There is no
1140 connection or relevancy to the issue.

By the Court: The same ruling.

By Mr. Freeman: I offer in evidence as Plaintiff's Exhibit No. 69 a summary of the telephone toll slips that I have just offered on the designation of Exhibits 64 through 68, and I will furnish counsel with two copies, which is all I have.

(Thereupon said document was marked as Plaintiff's Exhibit No. 69 for identification.)

By Mr. Meserow: I want, for the record, to make objection to the telephone calls of Mr. Keeshin and Mr. Forgash. There is no foundation showing they have anything to do with the transfer situation, and further, they are beyond the scope of the issue here of public injury.

By the Court: I presume that they are being offered, if they were permitted to go into them, that they would connect them up.

By Mr. Freeman: Yes, I would definitely connect them.

By the Court: Objection sustained on my general ruling.

By Mr. Thompson: If the Court please, we certainly object to this summary of telephone toll slips, which has no foundation laid for it at all. It contains a
1141 lot of alleged statements of facts as to who talked to whom and how long they talked without any showing at all that somebody called someone else, and they went out in the garden and hunted him for fifteen minutes and didn't find him and came back and hung up. There is no proof here these conversations ever took place, and we object to this document.

By Mr. Freeman: Your Honor, this summary was prepared by a witness who would testify this is an accurate statement of the toll slips.

In any event, they only go to summarize the toll slips and the extent to which they contain any information, and I don't say that they—

1142 By the Court: The same ruling.

By Mr. Thompson: The toll slips are hearsay in the first place, an dthis is hearsay on hearsay.

By Mr. Owens: Furthermore the toll slips, if they have any value as evidence, would be as records, and these are not records.

By the Court: I can do no more than exclude them and strike it.

By Mr. Freeman: Your Honor, we have a right to present evidence and then summarize it for the purpose of the jury, and that is what we are doing in this summary.

By the Court: Proceed.

By Mr. Freeman: I would like to offer to prove through Mr. Wayne A. Johnston, who would be presented here as a witness and through his deposition, that Mr. Johnston was the president of the Illinois Central Railroad in 1955 and still is president of the Illinois Central Railroad; that in April of 1955 Mr. Johnston heard a rumor that Mr. Cross might leave the Interstate Commerce Commission and come to Chicago with Keeshin if he got the transfer contract.

That Mr. Johnston had a meeting of the American
1143 Association of Railroads' directorship on April 29, 1955, meetings of that association occurring the last Friday of each month, and he went to Washington in connection with that meeting, and while there he went in to see Mr. Cross.

That he asked Mr. Cross if there was any truth to the statement that if the Keeshin Company received the contract he was going to work for them, and Mr. Cross said that that was so.

That Mr. Johnston received a telegram from Mr. Cross on April 26, dated April 25, advising Mr. Johnston that Mr. Cross intends to come to Chicago between May 31 and June 2nd and would like an opportunity to come up and visit with Mr. Johnston.

That pursuant to the receipt of this telegram, Mr. Johnston sent an answering telegram to Mr. Cross, which I would like to have marked, and which would be identified by Mr. Johnston as Plaintiff's Exhibit No. 70.

(Thereupon the said document was marked Plaintiff's Exhibit No. 70 for identification.)

That Mr. Johnston, in his telegram, said he would be in Washington on May 27 and would try to see Mr. Cross; that he tried to see him on May 27, and Mr. Cross 1144 was not there, and Mr. Johnston would testify when he came back to Chicago he was visited by Mr. Cross on June 1, 1955.

That Mr. Johnston would testify he talked to Mr. Cross about the possibility of a job for Cross' son; that Cross was a very personal friend of his of long standing.

Mr. Johnston, in addition, has testified that during 1955 and during the time that Mr. Cross, that he had these chats with Mr. Cross, that there were important Interstate Commerce Commission cases pending before the Interstate Commerce Commission involving the Illinois Central Railroad.

That is all I would offer to prove by Mr. Johnston, Mr. Thompson, and if you want to raise an objection, go ahead.

By Mr. Thompson: Yes; we challenge that Mr. John-

ston would testify that this conversation with Mr. Cross took place on a stated date or that he would testify as to when he heard the rumors. He was very uncertain about it, and he testified on two occasions, and on each occasion he was not able to give any definite time, but he said it may have occurred at this time when he was in Washington, and that is about as far as that went.

By Mr. Freeman: May I go on with my offer in
1145 view of Mr. Thompson's objection?

Mr. Johnston would further testify that the AAR had its meetings the last Friday of every month.

1146 That his diary showed that the meeting that was held the last Friday in March, he did not attend because he was in Mississippi on a vacation; that the meeting held in May he did attend, but he tried to see Cross and couldn't see him.

That the meeting held in June was held in Chicago; that the only meeting at which this could have occurred would have been April 29, 1955, because Mr. Johnston testified, and I offer to prove through his testimony, that this conversation with Mr. Cross occurred prior to the time that the decision was made to accept Keeshin as the transfer agent.

Mr. Johnston would further testify that at no time did he tell Mr. Cross that he thought Keeshin should go out and get the air porter service; that he did not tell Mr. Cross it would be a good thing for Keeshin to get both the transfer of passengers to the air port and between railroad stations.

That he did not tell Cross he felt the business of transporting passengers by rail didn't look very good, and did not suggest to Cross that Keeshin should give him a job and didn't even make such a suggestion in jest.

By the Court: The same ruling.

1147 By Mr. Freeman: I would offer to prove through Mr. R. P. Smart, who is and was the general pas-

senge[illegible]ent for the Illinois Central Railroad in 1955, that Mr. Smart attended the Chicago Terminal Lines' meeting as a representative of the Illinois Central; that he was selected to serve on the Committee of Six Railroads negotiating for a new transfer contract.

That Mr. Kimbel was the general passenger traffic manager of the railroad and also attended these meetings and stayed in close touch with the Chicago transfer issue and the negotiations.

Mr. Kimbel died the latter part of 1955; and that in the interim between May, between Mr. Kimbel's death and June 16 when a new general passenger traffic manager was selected, Mr. Grenrott, Mr. Hearne served as the general passenger traffic manager.

That Mr. Kimbel on several occasions had said that there should be no change in the transfer company unless there was "A very substantial saving in transfer charge."

That Mr. Kimbel had expressed himself as satisfied with the Parmelee Transportation service; that Mr. Smart could find no memorandum in any of the Illinois Central passenger files prior to June 3, 1955, which
1148 commented unfavorably about Parmelee's service.

That minor complaints by the passenger department were corrected when reported to Parmelee, and this report was usually made to Mr. Scheeder; that he had no recollection and would have no recollection with respect to any of these negotiations except what was contained in the memoranda in the file.

1149 That was going to be Mr. Smart's attitude on the stand in answer to all questions.

That he had received no complaints against Parmelee's equipment; that he had never filed a complaint with Parmelee; that there was no memorandum in the file commenting unfavorably about Parmelee's equipment.

That he had never asked Parmelee to use station wagons, and the Illinois Central had never asked Parmelee to air condition its equipment or to replace any of its equipment.

That Parmelee did replace its equipment every three years; that they used specially built equipment with enclosed baggage compartments, and the station wagons proposed by Keeshin did not have such enclosures.

That Mr. Smart in all of his dealings with Parmelee found them to be reliable; that they performed work and lost money; that they fulfilled their commitments at all times, and that Parmelee supplied the committee with all financial information requested.

That at no time had he experienced any difficulties, or did the Illinois Central experience any difficulties 1150 by reason of Parmelee's dispatch system.

That with respect to Keeshin's equipment, Mr. Smart would testify that the station wagons that were ultimately used were the same as had been described in Mr. Keeshin's December 1954 proposal; that he objected to the lack of exits in the Volkswagen, but no effort was made by Keeshin to correct that; and Volkswagens were placed in service.

That he objected to the use of school buses because of inadequate baggage space, that the buses were put in service.

That the adequate handling of baggage is an important aspect of the passenger transfer, and that there are three different phases of the baggage handled — the baggage accompanying the passenger, the baggage that is checked through, which doesn't accompany the passenger, and the pickup and delivery of baggage in the metropolitan area.

Some objections to the methods proposed by Keeshin to handle baggage were raised by other railroad representatives.

Keeshin's proposal at first was to handle the baggage on the top of the station wagons exposed to the
1151 weather. This suggestion would have required the use of a tarpaulin, but none were shown to the committee inspecting the equipment.

That on May 20 he prepared a memorandum, which has been previously identified as IC-18, and which I will have identified here as as Plaintiff's Exhibit No. 71.

(Thereupon the said document was marked Plaintiff's Exhibit No. 71 for identification.)

That this memorandum was discussed with Mr. Hearne and with Mr. Kimbel: that it was prepared in the ordinary course of business; that it was prepared after the May 19, 1955, committee meeting, but it represented Mr. Kimbel's thinking on the subject and not Mr. Smart's, so Mr. Smart would testify.

This memo is addressed to the vice president in charge of transportation. Actually, your Honor, this memorandum would be admissible, and I don't think it should be excluded under the same category.

It deals with a comparison of Keeshin's service and Parmelee's service and ends up by recommending they continue with the Parmelee service.

1152 This is a May 20 memo.

By the Court: That comes under my general ruling, that if it does not pertain to the conspiracy, it may be received in evidence.

By Mr. Freeman: This is in the same category as two other memos.

By the Court: I say my ruling covers that.

By Mr. Freeman: That two copies of this memo were presented to the vice-president, but neither copy has been found.

That on April 20, Mr. Smart received a telephone call from Mr. Bone of the New York Central Railroad in

which Mr. Bone advised him that presidents of railroads have been contacted by transfer companies on this issue, and Mr. Bone suggested that a matter of policy was involved which required the presence of top level passenger executives at the next committee meeting.

Mr. Smart prepared a memorandum of that telephone conversation, which is identified as IC-31, and which I would like to here identify as Plaintiff's Exhibit No. 72.

(Thereupon said document was marked as Plaintiff's Exhibit No. 72 for identification.)

1153 That this memorandum was prepared in the regular course of business, Mr. Smart would say, and was shown to Mr. Kimbel, who had a penciled notation in the right corner, "Remind me."

That on June 2nd in the late evening, Mr. Smart received a telephone call from Mr. Hearne, his then superior, requesting Mr. Smart to canvass the other railroads to see what their attitude was pursuant to a request to that effect made by Mr. Trovillion.

By Mr. Thompson: That statement has no basis, the latter part of it, and I will challenge it.

By Mr. Freeman: You do?

I will read the deposition in a minute for Mr. Thompson's benefit, but away from the Court.

That Mr. Smart did call as many of the railroad representatives on the committee as he could between the course of 7:00 p.m. and 10:00 p.m. on June 2nd, the day before the committee meeting was to take place on June 3rd in the morning.

That there was no previous instance, Mr. Smart recalled, of any such canvass of the committee.

That Mr. Holt of the Pennsylvania Railroad did not express his own view but stated that Keeshin had been O.K.'d in Philadelphia.

1154 That a memorandum of this conversation or memorandum recording this conversation was prepared by Mr. Smart and was identified as IC-28, and I would like to have it here identified.

Mr. Smart would testify that the memorandum was prepared in his handwriting, contemporaneously with his conversations with these people the night of June 2nd, and I would like to have this marked as Plaintiff's Exhibit No. 73.

(Thereupon said document was marked as Plaintiff's Exhibit No. 73 for identification.)

Here again Mr. Smart would testify that when he called Mr. Holt, Mr. Holt told him that according to the memorandum, Keeshin's proposal had been O.K.'d by Philadelphia.

When he spoke to Mr. Coleman of the Baltimore and Ohio, Mr. Coleman advised him that Mr. Whittington would attend the meeting of June 3rd and would advise him then.

When he spoke to Mr. Quackenbush of the North Western, he was unable to give him any advice which proposal the North Western would favor, but Mr. Quackenbush said he would attend the meeting on June 3rd and hoped that he could announce the decision at that time.

1155 That Mr. Smart attended a meeting early on the morning of June 3rd, with Mr. Trovillion, vice president of the Illinois Central, and Mr. Hearne, and that at that meeting, Mr. Trovillion gave him instructions for Keeshin.

By Mr. Thompson: Now, if your Honor please —

By Mr. Freeman: Page 1183, Mr. Thompson. Look at the record.

That Mr. Smart would testify that Railway Express Agency had submitted a proposal upon the transfer serv-

ice in 1955 at cost plus fifteen percent, and had been rejected:

That Willett had submitted a proposal at the same rate as Parmelee, and that had been rejected. Willett's proposal, Mr. Smart would testify, also included the proposition that the railroads would load and unload baggage.

That the Keeshin proposal was at the same rate, and Mr. Smart had prepared a memorandum undated but identified as IC-29-A, which Mr. Smart would identify, as being prepared in his handwriting, and which he would testify reads:

> "Loading and unloading trailers at baggage room docks. Personnel don't favor because of I.C. help.
> 1156 Consult baggage department about Keeshin proposal."

I would like to identify this as Plaintiff's Exhibit No. 74 for identification.

(Thereupon the said document was marked Plaintiff's Exhibit No. 74 for identification.)

I have nothing further that I would offer through Mr. Smart.

By Mr. Thompson: We advise the Court that Mr. Smart is not a managing agent and therefore cannot be called, excepting as the statute provides, where he is dead or absent from the jurisdiction, and what have you, but Mr. Smart has been in the courtroom every day since last Tuesday at the request of plaintiff, and he is available to testify, and if they want his testimony, they can produce it.

We say Mr. Smart will not testify as has been represented.

By the Court: The same ruling.

By Mr. Freeman: All right.

By Mr. Thompson: And we object to the testimony.

By Mr. Freeman: I would also offer in evidence in

view of some of the remarks that have been made by Mr. Thompson, the deposition of Mr. D. J. Hearne,
1157 who was, during this period from May 10, 1955, to June 16, 1955, the acting general passenger traffic manager of the Illinois Central.

Mr. Hearne is now deceased.

Mr. Hearne in his deposition testified that he discussed the May 20 memorandum with Mr. Smart and signed that memorandum with Mr. Kimbel's signature.

That Smart said that Kimbel had directed his recommendations along those lines; that Hearne testified that he had said to Smart, "You have been through all this and you know all about it, and I will accept your recommendation."

That he could not remember any other conversation with Smart from the time of this memorandum recommending Parmelee until the night of June 2nd.

That on June 2nd, on the night of June 2nd, Trovillion called Mr. Hearne, realizing that the matter was coming up the following day in committee, and asked Mr. Hearne if he knew the position of the other lines; that Mr. Hearne said that he would develop that information and called Smart that evening to do so, and also told Smart that Trovillion wanted to see them early the next morning
1158 before the committee meeting.

That Mr. Hearne testified that they got to the committee meeting—that they got to Mr. Trovillion's meeting early that next morning; that they discussed the proposals and then Mr. Trovillion said, "Bless you. Use your own judgment."

1159 That is all I have of Mr. Hearne.

By Mr. Thompson: If they are offering Mr. Hearne's deposition, it is properly offered, of course, because he is dead, but we object to this summary of testimony as having no bearing on any of the issues and as

not supported by any oath of any kind.

By the Court: The same ruling.

By Mr. Freeman: Your Honor, of course we would offer Mr. Hearne's deposition, and we would read it before the jury, but in view of the fact that part of this deals with the conspiracy issue, we are telescoping it.

By the Court: The same ruling, Mr. Freeman.

By Mr. Freeman: I would next call some New York Central witnesses, Mr. Keating, and the first of these would be Mr. Fred H. Baird, who in 1955 was the assistant vice-president in charge of passenger traffic on the New York Central Railroad and located in New York City.

That he did in that capacity supervise the Chicago transfer services, and he received reports regularly from Mr. Bone on these problems.

His telephone calls were infrequent. He knew Mr. Markin and testified that Mr. Markin and the Parmelee company always fulfilled their commitments.

1160 That Parmelee had presented a proposal to the railroads dated March 15, 1955 and that he had received, that Mr. Baird had received a copy of this proposal from Mr. Padrick on March 22, 1955 and had addressed a reply to Mr. Markin approving of the Parmelee proposal.

I ask to have marked for the purpose of identification this copy of a letter dated March 24, 1955 from Mr. Baird to Mr. Markin as Plaintiff's Exhibit No. 75.

(Thereupon said document was marked as Plaintiff's Exhibit No. 75 for identification.)

That Mr. Baird would testify that he did execute the letter and mail it to Mr. Markin on March 24, this letter identified as Plaintiff's Exhibit No. 75, and in this letter he says:

"I have read your proposal of March 15 addressed to Mr. Padrick concerning the transfer service per-

formed by Parmelee Transportation Company at Chicago. I see no reason why it should not be adopted by the Chicago Terminal Lines as it impressed me as being fair and reasonable."

That on April 21, 1955, Mr. Whittington of the
1161 Baltimore and Ohio met with Mr. Baird in New York City. That he remembers some conversation with Mr. Whittington about the transfer situation, but that he denies that Mr. Whittington came to New York for the purpose of determining what type of increase in passenger fares the competing railroads in the east would fix.

That he does not fix passenger fares that way and denies that Mr. Whittington ever made any such suggestion to him.

That Mr. Baird could not recall whether or not he transmitted information to Mr. Bone with respect to contacts being made against railroad presidents.

That on April 27, he did receive a memorandum from Mr. Bone, and this memo I would identify as Plaintiff's Exhibit No. 76, for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 76 for identification.)

It has been coded as New York 308 and 309.

This memorandum, as Mr. Baird has testified was transmitted to Mr. Nickerson, the vice-president of the railroad for answer. The memorandum in part says that Mr. Perlman, the president of the New York Central
1162 Railroad, has talked with Mr. Fawcett, the resident vice-president in Chicago, regarding the status of the transfer situation.

That the Keeshin and Parmelee proposals are indicated, and the memorandum says in the next to the last paragraph as follows:

1163 "When Mr. Perlman discussed the matter with Mr. Fawcett he asked if I . . ." Mr. Bone ". . .

could keep the case open for decision until he could have an opportunity to analyze it. Would you please advise what our position in the case should be in view of the analysis by Mr. Perlman?"

That is in the next to the last paragraph.

Mr. Baird would further testify that on May 19 and May 20 he received memoranda from Mr. Bone dealing with the negotiations, and pursuant thereto prepared his own memorandum on May 20, 1955, which I would have identified as Plaintiff's Exhibit No. 77.

(Thereupon the said document was marked Plaintiff's Exhibit No. 77, for identification.)

That in this memorandum Mr. Baird would testify he did try to summarize the situation and was of the opinion that both the Parmelee and Keeshin bids are very close, and that both propose escalator clauses and both propose new equipment and both propose five-year contracts.

That he would testify he received a call from Mr. 1164 Bone on May 24, but does not recall the substance of that call. That he knew that Mr. Keeshin was not in the transfer business, the passenger transfer business and didn't know whether he had any experience in the carrying of passengers, that he wanted an enforceable contract with Keeshin, and subsequent to his telephone call from Mr. Bone he received a recommendation from Bone of Keeshin on May 24, and pursuant to that recommendation Mr. Baird prepared a memorandum to Mr. Nickerson, his vice president, dated May 26, which I would have identified as Plaintiff's Exhibit No. 78.

(Thereupon the said document was marked Plaintiff's Exhibit No. 78 for identification.)

That in this memorandum Mr. Baird pointed out that:

"We must be sure, of course, that an enforceable contract is negotiated with Keeshin, and that the

same will guarantee continuity of service by Keeshin or his successor in the event the Keeshin Company decides to dispose of the business at some later date. The manner of settlement should also be plainly
1165 stated, the railroads involved in the contract settling on the basis of coupons presented and on which service has been performed."

That on May 31, Mr. Baird prepared a subsequent memo, this time addressed to Mr. Bone, which I will have identified as Plaintiff's Exhibit No. 79.

(Thereupon the said document was marked Plaintiff's Exhibit No. 79 for identification.)

In this Mr. Baird points out that the recommendation for Keeshin has been approved by Mr. Nickerson, and that the provisions outlined in the last paragraph of Mr. Baird's letter are necessary, and the contract finally awarded Keeshin should be clear with respect to each provision.

There is nothing further on Mr. Baird. I would offer these exhibits in evidence through Mr. Baird's identification.

By Mr. Keating: The same objection to this, your Honor.

By the Court: The same ruling.

1166 By Mr. Freeman: I would also offer in evidence the testimony of Mr. C. A. Fawcett, a resident vice-president of the New York Central Railroad who resided in Chicago, whose office was in Chicago, and he is now retired.

Mr. Fawcett's deposition was taken, and he testified that he did not play any part in the Chicago transfer negotiations, but after April 27, 1955 he did receive memoranda from Mr. Bone, copies of memoranda from Mr. Bone dealing with the Chicago transfer negotiations.

That on April 27 Perlman was in Chicago, and while walking through the station with Fawcett saw many Parmelee cabs, and this brought the matter of the transfer negotiations to Mr. Fawcett's mind, and he advised Perlman that passenger people were negotiating with Parmelee and Keeshin for the new contract.

Mr. Perlman said, "May the best man win."

Mr. Fawcett recalled something further.

Mr. Fawcett, when shown the April 27 memorandum of his conversation with Mr. Bone, denies that he made any such statement. He admits that he had a conversation with Mr. Bone on April 27, but he recalls nothing further about that and recalls no part of the memo-
1167 randum.

He doesn't even recall having read the memorandum, although a copy of it was sent to him.

Subsequently, Mr. Fawcett's diary shows a meeting with Mr. Perlman in Elkhart, Indiana on May 13.

This Mr. Fawcett described as having been recorded in his diary, because Mr. Perlman was passing by a train and waved to him while he was on the platform, so he recorded that in his diary, but he denied that he had any meeting with Mr. Perlman on May 13, 1955.

That Mr. Fawcett prepared or did send to Mr. Perlman an editorial, which appeared in the Chicago Daily News on January 20, 1956 entitled "The Cross Inquiry," with the notation, "Interesting"; and he sent this to Mr. Perlman, and I would identify it as Plaintiff's Exhibit No. 80.

(Thereupon said document was marked Plaintiff's Exhibit No. 80 for identification.)

By Mr. Freeman: I would like to have this marked as Plaintiff's Exhibit No. 81, the joint letter from Fawcett and Jenks to the Parmelee Transportation Company dated August 10, 1955.

1168 (Thereupon said document was marked Plaintiff's Exhibit No. 81 for identification.)

By Mr. Freeman: Mr. Fawcett would testify that on or about August 10, 1955 he or his counsel had prepared a joint letter of his and the then vice-president Mr. D. B. Jenks of the Rock Island Railroad, in view of the fact that the New York Central and the Rock Island Railroad were the joint owners of the LaSalle Street Station.

He would testify also that Mr. Jenks has subsequently become president of the Chicago, Rock Island and Pacific Railroad.

That in this letter Mr. Fawcett and Mr. Jenks stated to the Parmelee Transportation Company in connection with the cancellation of their contract:

"May we take this opportunity of expressing to the Parmelee Transportation Company, whose services and association we have enjoyed for so many
1169 years at LaSalle Street Station our respect for the organization and its historical affiliation with the railroad transportation industry in Chicago."

This letter was written on August 10, 1955, after we contend the conspiracy had resulted in the selection of Mr. Keeshin.

That is all I would have to offer through Mr. Fawcett.

By Mr. Keating: The same objection.

By the Court: The same ruling.

By Mr. Owens: Certainly, your Honor, with respect to that newspaper article, I can't see any relevance at all as part of a record of any kind of any basis.

By the Court: The objection goes to the whole thing.

By Mr. Freeman: I would seek to sustain the relevance of that and the competence of that information, but I see that your ruling was broad.

By the Court: Do you want to recess now until two o'clock?

By Mr. Freeman: I think that might be helpful.
By the Court: We will recess until 2:00 o'clock.

(Thereupon a recess was taken until 2:00 p.m., of the same day, Monday, May 2, 1960.)

1170 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Monday, May 2, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.
Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman
Mr. John Borst, Jr.,
Mr. John Paul Stevens,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

1171 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1172 (Thereupon the following proceedings were had herein:)

By The Clerk: Case on trial.

By Mr. Freeman: I believe I finished with an offer of proof of Mr. Fawcett.

I would also offer to prove through Mr. Sidney W. Bone, who in 1955 was general passenger agent of the New York Central Railroad and the managing agent under the statute, and who would be examined as an adverse witness, that he was chairman of the negotiating committee of six railroads established January 29, 1954, to investigate the possibility of reducing the transfer costs;

That these transfer negotiations were reported to Mr. Baird in New York City; that the New York Central Railroad was the largest transfer factor accounting for 22 percent of the transfer business;

That after the committee had various meetings with prospective contractors through 1954, then after having received Mr. Keeshin's proposal of December 1954, the committee met on January 5, 1955, and were of the opinion that Keeshin's proposal was not sufficient to change from Parmelee.

It was the concensus of the committee that a substantial reduction in transfer costs would have to be proposed before a change from Parmelee should be recommended.

1173 I would ask Mr. Bone and establish a series of notations that Mr. Bone made at these various committee meetings, commencing with January 5, 1955, and coded as New York Central 121 to 134.

Mr. Bone would identify these sheets as notations made in his handwriting during the committee hearings, and I would identify and offer in evidence these documents as Plaintiff's Exhibit 82.

(Thereupon said documents were marked as Plaintiff's Exhibit No. 82 for identification.)

By Mr. Freeman: On coded page New York 123, Mr. Bone in his handwriting would testify that he had noted that E. B. P., meaning Mr. Padrick, "has asked Parmelee to offer us their suggestion to improve service and transfer charge. J. L. Keeshin proposal at $1.20 is not sufficient to change from Parmelee. Railroad to be worse off account of loading trailers. A rate of $1.20 would be attractive."

On the following pages, page 125, there are notations made with respect to the Willett proposal and the remark underlying "Same price as now getting." On page 126, "Same price as now getting,"

Mr. Bone would testify that the Willett proposal
1174 was rejected because Willett offered the same price as the Parmelee contract;

That the committee then prepared a progress report, which has been previously identified in this record, January 5, 1955, and transmitted this progress report to all of the Chicago Terminal Lines in anticipation of a meeting to be held of the Chicago Terminal Lines on February 1, 1955.

The committee progress report was transmitted under a letter indicating that the committee had been established to study methods of getting a better price than we are now achieving. At the February 1st meeting of the Chicago Terminal Lines the committee's progress report was received and concurred in, and it was the concensus of the meeting that there should be no change from Parmelee unless a reduction of 10 to 20 cents in the transfer coupon rate was achieved.

1175 That a meeting with Parmelee's representative was held by the committee on March 17, 1955, to

consider a proposal presented by Parmelee under date of March 15. That Mr. Bone would testify that he does not recall having any conversation with Mr. Markin on that date at which Mr. Bone stated that the proposal submitted by the Parmelee Company was good, and that they had a deal.

On April 27, 1955, Mr. Bone would testify that Fawcett, the resident vice president, reported to him that President Perlman has asked about the Chicago transfer negotiations, but Mr. Bone would further testify that he doesn't recall anything else other than that remark, but that he did prepare a memorandum of his conversations with Mr. Fawcett, and that has been previously identified in this record as Plaintiff's Exhibit No. 76.

Further, that Mr. Bone would testify that the memorandum was accurate as far as it went, and that a copy of it was sent to Mr. Baird in New York and a copy to Mr. Fawcett.

Mr. Bone would further testify that he called various committee members on or about April 28, but he would deny that he informed these committee members that railroad presidents had been contacted by the transfer companies, and, as a matter of policy, they should have their top executive people present at the meeting.

1176

He would further deny that he did not advise Mr. Smart of the Illinois Central that Mr. Cross had contacted the Baltimore and Ohio, the Pennsylvania and the New York Central, and that Cross had a job opportunity with the Keeshin Company if they got the transfer contract.

Mr. Bone would further testify that he did not know that Mr. Whittington of the Baltimore and Ohio was going to attend the meeting, despite the fact that under Plaintiff's Exhibit 72 Mr. Smart reports Mr. Bone so advised him.

Mr. Bone would deny that he was not advised, that

Comer of the Pennsylvania would attend, and he so testified and denied it.

I would seek to have identified as Plaintiff's Exhibit No. 83, a memorandum from Mr. Bone's secretary to Mr. Baird dated May 17, in which he specifically notes that he was advised that Mr. Comer, of the Pennsylvania and Mr. Whittington would attend.

(Thereupon the said document was marked Plaintiff's Exhibit 83 for identification.)

1177 Mr. Bone would further testify and would deny that he was advised that Mr. Baird of the New York Central would not attend, and here again this denial would be in conflict with his own memorandum that has been identified as Plaintiff's Exhibit No. 83.

The committee met on May 19, 1955, and was augmented by various top passenger executives of the Baltimore and Ohio, the Pennsylvania, the North Western and the Illinois Central Railroads, and after hearing both Mr. Keeshin and Mr. Markin in the afternoon, the committee adjourned in order to get the views of the executive officers of these railroads.

1178 That Mr. Bone prepared several memoranda after this meeting, and the first of these memoranda is a three-page memoranda coded as New York 310 to 312 and marked for the purpose of identification as Plaintiff's Exhibit No. 84.

(Thereupon said document was marked as Plaintiff's Exhibit No. 84 for identification.)

By Mr. Freeman: Mr. Bone would testify that this memorandum was prepared after the May 19th meeting, that it was prepared in the ordinary course of his activities as chairman of the committee and as representative of the New York Central, that it was placed in the files and sent to Mr. Baird in New York and a copy sent to Mr. Fawcett.

That in the memorandum he attempts to summarize the respective proposals of Keeshin and the Parmelee company and notes that the rates proposed by Keeshin and Parmelee differ from the fourth, fifth and the sixth years;

That Keeshin proposed to handle his baggage on top of the station wagons; that Parmelee had compartments for baggage which protected the passengers.

That June 3rd was set for the date of decision, and Mr. Bone inquired in this memorandum.

1179 "Is that sufficient time for you 'to analyze the situation' and let me have the position of the company?"

That on May 20, the next day, Mr. Bone prepared a supplemental memorandum, and I ask that this document be marked as Plaintiff's Exhibit No. 85 for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 85 for identification.)

By Mr. Freeman: Mr. Bone would testify that Plaintiff's Exhibit 85 was prepared pursuant to a conversation that he had with Mr. Markin in which specific maximum rates were established for each year of the six years of the contract proposed by Parmelee, and this Exhibit 85, when read in conjunction with 84, would bring the respective proposals of Keeshin and Parmelee completely down to date.

That on May 23rd, 1955, Mr. Bone was called by President Perlman of the New York Central Railroad, and Mr. Bone would testify that he was asked what the situation was on the Chicago transfer, that he reported to Mr. Perlman that the bids had narrowed down between Keeshin and Parmelee and the Perlman said, "May the best man win," and that is all of the conversation

1180 that occurred, but that Mr. Bone would further testify that this was the first and only time in his entire history with this railroad that he had received a call from Perlman or any president of the railroad.

That Mr. Perlman did not bawl Mr. Bone out for leaking information to the bidders, and did not bawl him out that the bids were identical to the penny for each year for five years;

That on the same day, May 23rd, Mr. Perlman's assistant, Mr. Whited called Mr. Bone and asked him to present a copy of Parmelee's latest proposal; that pursuant to that request Mr. Bone transmitted to Mr. Whited on May 23rd a copy of the proposal, which I would like to have marked, for the purpose of identification, as Plaintiff's Exhibit No. 86, and consists of two pages, the letter of transmittal and the proposal itself.

(Thereupon said document was marked as Plaintiff's Exhibit No. 86 for identification.)

1181 I would also prove through Mr. Bone that on May 23rd he assumed and believed that Parmelee would be continued with the transfer contract and, in fact, on May 23rd Mr. Bone addressed a letter to Mr. Nerland of the New York Central organization, in which he advised Mr. Nerland that the Parmelee Transportation Company will handle group movements between the terminals at the rate of fifty cents per capita, and he wanted Mr. Nerland to make the necessary arrangements to account for it.

That this memorandum of May 23, Mr. Bone requested be disregarded on June 28, 1955.

That the first letter of May 23rd I would like to have marked, for the purpose of identification, as Plaintiff's Exhibit No. 87, and the second letter, which followed it up on May 23rd, 1955, and which contains a penciled

notation "F.B.I." who is Mr. Bone's secretary, saying, "Disregard—4:00 p.m., 6-28-55," having Mr. Bone's initial on it, as 87-A.

(The said documents were thereupon marked Plaintiff's Exhibits Nos. 87 and 87-A for identification.)

1182 By Mr. Freeman: Mr. Bone would testify that Exhibits 87 and 87-A were prepared in the ordinary course of business, and do contain his initial "B," indicating that he has seen these memoranda;

That on May 24, the day following Mr. Perlman's conversation with Mr. Bone, Mr. Bone addressed a memorandum to Mr. Baird, in which he says:

"I confirm our telephone conversation of today concerning the Chicago transfer situation,"

and expresses a recommendation in favor of Keeshin.

This memorandum I ask to be marked for the purpose of identification as Plaintiff's Exhibit 88.

(Thereupon said document was marked as Plaintiff's Exhibit No. 88 for identification.)

By Mr. Freeman: Mr. Bone would testify that this memorandum also was prepared in the ordinary course of business, but we would offer to prove through Mr. Bone that his recommendation for Keeshin was directed and instructed by Mr. Perlman as a result of his telephone conversation, the day before with the president of the New York Central Railroad.

By Mr. Thompson: There is nothing on which
1183 to base any statement that he is going to prove any such thing.

By Mr. Freeman: I have already put it in.

By Mr. Thompson: All the testimony is to the contrary.

By Mr. Freeman: There is no testimony to the contrary, your Honor, but I have made my statement.

Now further, Mr. Bone would testify that Parmelee acted promptly on all complaints; that Parmelee's handling of baggage and transfer in 1955 was generally good; that in the committee negotiations it was understood that Parmelee would always have the opportunity of presenting the last proposal;

That they were not dealing on the basis of competitive bidding, but that Mr. Padrick was to keep in touch with the negotiations and with Parmelee for the purpose of securing a proposal from them; that Keeshin's rates were possibly higher than Parmelee's;

That Mr. Bone, in his memoranda to New York, recognized that the rates proposed by Keeshin and Parmelee in the fourth, fifth and sixth years were different;

That Mr. Bone would testify that the committee under no circumstances would accept any verbal proposals, but insisted that all commitments by the prospective con-
1184 tractors be presented in writing; and that Keeshin did not advise the committee during the course of negotiations that he had any experience at all with the handling of passengers.

So much for Mr. Bone.

By Mr. Meserow: We want to make the same objection.

By the Court: Same ruling.

We will take a five minute recess.

(Thereupon a short recess was taken.)

1185 By the Court: Proceed.

By Mr. Thompson: In addition to the objection which Mr. Meserow made, which has been sustained, we are not repeating every time these things come in by document and what have you, but of course it is hearsay as to everybody except the author of the document and

the one on whose behalf the document is presented. So it is all hearsay as to all the rest of the defendants.

Furthermore, we want specifically in this instance to object to the form of the offer of proof. I have never yet heard of an offer where you say that a witness, if he is called to testify, will deny all this, but, and then say something else, which is— I don't know what you offer to prove when you prove a witness is going to testify directly to the contrary to what you want to prove.

Anyway, we object to the form of this. It violates the most elementary rule.

By the Court: Same ruling.

By Mr. Keating: Same ruling, your Honor?

By the Court: Same ruling.

By Mr. Freeman: Your Honor, I am assuming that I have expressly and specifically made an offer of these documents in evidence. I have included them in my 1186 offer of proof. But just to be clear about them, we have proceeded from Plaintiff's Exhibits 64 through 88, and I specifically offer those documents that I have identified in the offer of proof in evidence.

By the Court: Same ruling.

By Mr. Thompson: There is one document there which I haven't seen, but he says that it includes the Markin proposal or the Parmelee proposal of March 15, 1955.

Now, it was said earlier in the case that all of the proposals of Markin and Keeshin would be put in evidence. We have no objection to the Markin proposal of March 15, 1955, and to the supplement of May 20, or whatever date it was, if they are in fact the true proposals, though I haven't seen them. They are introduced here in the character of transmittals—

By Mr. McConnell: It is subject to check. Let him check them.

By Mr. Thompson: We will check them, of course.

Of course, as to Keeshin's proposals, we hope they keep their promise and put them in evidence so the two will be here of December 15, 1954, January 15, 1955, and April 6, 1955.

1187 By the Court: Well, the offer—

By Mr. Freeman: Excuse me, your Honor. Mr. Thompson is not quite correct and possibly—I did say that the Parmelee proposal was transmitted, but it was a description of it, not the proposal itself.

At the proper time I will invite Mr. Thompson's attention to the original proposals that came out of the railroad files, and I will put them all together, Parmelee's, Keeshin's, and the ultimate contract, and I think we ought to have an agreement that they should go in the record.

By the Court: All right. The same ruling in the meantime.

1188 By Mr. Thompson: Well, I meant that my objection to all these documents was hearsay except as to the one who prepared them. I think I have already said it, but I want to be sure about it.

By the Court: It is covered.

By Mr. Freeman: I would offer to prove through the testimony of Mr. A. E. Perlman, who in 1955 was president of the New York Central and remains president of the New York Central and is an adverse witness, president of one of the defendants here, that the New York Central Railroad is one of the largest railroads in the United States; that the president has to determine and decide problems of finance, operations, real estate development of tremendous magnitude;

That Mr. Perlman became president in 1954, after a proxy fight; that one issue in the proxy fight was submitted to the Interstate Commerce Commission for determination;

That he received no material regarding the Chicago transfer issue except a memorandum from Mr. Bone on May 23, 1955, or dated May 23;

That he was in Chicago on April 27, 1955, and Mr. Perlman would testify that while walking through the La Salle Station he saw many people waiting for
1189 transfer service, and he asked Mr. Fawcett, with whom he was walking, what was the matter, and was told that the transfer contract was up for bidding; that Mr. Perlman said that was fine. That is all that Mr. Perlman would remember and testify to.

That he remembers that he had several conversations and meetings with Mr. Nickerson, his vice-president, and asked Mr. Nickerson when the transfer situation would be closed;

That he was advised that the Parmelee bids and the Keeshin bids were identical to the penny, step by step, for five years, and pursuant thereto he called Mr. Bone on May 23 to "bawl Bone out" for leaking information to these bidders which resulted in identical bids to the penny for each step of the five years;

That Mr. Bone stated to him over the telephone, pursuant to this bawling out, that the bids were identical to the penny;

That Mr. Perlman had a meeting with Mr. Forgash of the United States Freight Company and a subsidiary of the New York Central on May 24, in the morning, in his office in New York;

That Mr. Perlman had various meetings with Mr. Simpson of the Baltimore and Ohio, one on April 21 in
1190 New York City, two on April 29 in Washington, D.C., one on May 4 in New York City, one on May 19 in New York City, one on May 27 in New York City.

Mr. Perlman would testify that he doesn't recall whether he had a conversation with Mr. Simpson and whether

Mr. Simpson advised him of the Chicago transfer negotiations and of the intervention of Mr. Cross, but Mr. Perlman emphatically denies that he had any such conversation with Mr. Carpi of the Pennsylvania Railroad.

1191 That is all for him.

By Mr. Keating: Same objection, if your Honor please.

By the Court: Same ruling.

By Mr. Freeman: I would now proceed with an offer of proof in connection with the Pennsylvania Railroad. I would first offer to prove through Mr. Fred Carpi, who in 1955 and today was vice president in charge of traffic for the Pennsylvania Railroad, that Mr. Carpi would testify that this was a very important vice presidency, and he had charge of four substantial divisions of the Pennsylvania.

That the Pennsylvania Railroad is one of the largest railroads in the world and did a business in 1955 of $934,000,000 in gross.

That Mr. Carpi receives reports from all of his departments orally, that he doesn't receive any written memoranda, and that he doesn't bother to keep records.

That he had a contact—that he knew Cross only slightly before he became Chairman of the Interstate Commerce Commission; that Cross called Carpi for an appointment and did come to Philadelphia, possibly on a Saturday, but certainly the latter part of April.

1192 That Cross called Carpi on the telephone a number of times in the spring and summer of 1955, and that Carpi met with Mr. Hugh Cross four or five times in 1955.

That at no time did Mr. Carpi prepare a memorandum of these meetings or talks with Cross or discuss these talks with other people at the Pennsylvania.

Carpi claims in his testimony that these conversations were largely about clean cars and car supply; that his conversations were with Cross because he was Chairman of the Interstate Commerce Commission, and Mr. Carpi testifies that he always talks to the Chairman and only to the Chairman.

That Mr. Cross in his telephone conversation had said he was quite concerned that the Pennsylvania Railroad might go under water in a depression, and therefore called Mr. Carpi to discuss the financial condition of the Pennsylvania Railroad with him, and that was one of the principal subjects of their telephone conversations.

That Mr. Carpi did have a memorandum prepared, and the first memorandum and only memorandum in Mr. Carpi's files dealing with any conversation with Mr. 1193 Cross is dated October 6, 1955, and I ask that this be marked for the purpose of identification as Plaintiff's Exhibit No. 89.

(Therefore the said document was marked Plaintiff's Exhibit No. 89 for identification.)

That Mr. Carpi would testify that there were no memoranda in the Pennsylvania files in Philadelphia during the period from February 1, 1955, to June 15, 1955, bearing on the Chicago transfer negotiations, but on June 15, 1955, he received a note from Mr. Comer, his general passenger traffic manager in Philadelphia, saying:

"Holt did a good job re the transfer in Chicago. A note from you is in order."

On the next day Mr. Carpi sent Mr. Holt in Chicago a congratulatory note saying:

"It is quite obvious you have done an outstanding job in connection with the new transfer arrangements at Chicago for which I should like to extend my sincere thanks and congratulations."

1194 I ask that these documents be marked, for the purpose of identification, as Plaintiff's Exhibits 90 and 91.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 90 and 91 for identification.)

By Mr. Freeman: That Mr. Carpi would further testify that during this period in the spring and summer of 1955, the Pennsylvania Railroad had cases of primary importance pending before the Interstate Commerce Commission, including the purchase of the Toledo, Peoria Western Railroad jointly with the Santa Fe Railroad, an increase in coal rates of 35 cents, sometimes known as the coal roll-back case, a case involving per diem car rental cases in which the Pennsylvania was one of the principal participants, and other matters of that character.

That is all I would have on Mr. Carpi.

By Mr. Thompson: We object here to the form of the offer, and we also object to the documents as hearsay as to everybody excepting the people involved, and that they are wholly irrelevant to any issue in this case, and we challenge the good faith of the representations as

1195 to what Mr. Carpi would testify to, and his deposition will not bear it out.

By the Court: The same ruling.

By Mr. Freeman: I offer to prove through Mr. E. R. Comer, the general passenger traffic manager for the Pennsylvania Railroad and located in Philadelphia, that Mr. Comer would testify he was not a member of the Chicago negotiating committee or the Chicago Terminal Lines, but that he did attend the May 19th meeting of the committee and the May 3rd meeting in 1955, and that these were the first meetings that he ever attended in his relationships with the railroad.

That he was invited to attend this meeting by Mr. Holt.

That he did not have any prior discussions with Mr. Holt, he would testify, concerning the Chicago transfer negotiations, but that he reported to Mr. Carpi and did have conversations on the Chicago transfer issue with Mr. Carpi.

Mr. Comer would likewise testify that it was the practice of the Pennsylvania Railroad not to prepare any written memoranda, and that there were no written reports from Comer to Carpi or from Holt to Comer and Carpi, that the files—that the passenger traffic files
1196 in Philadelphia show a gap of papers from February 1, 1955 to June 3, 1955, but that on June 7, 1955 Comer did write a memorandum to Holt requesting a prompt report on the June 13th committee meeting, and on June 14 such a report was presented.

That this request for a report and the report itself were not found in the files in Philadelphia, but were found in the files in Chicago.

I will mark, for the purpose of identification, as Plaintiff's Exhibit 92, this request for report dated June 7, and as Plaintiff's Exhibit 93, Mr. Holt's report of June 14.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 92 and 93 for identification.)

1197 I offer in evidence the documents that have been marked under the offer of proof in the case of Carpi and Comer.

By Mr. Meserow: Same objection.

By the Court: Same ruling.

By Mr. Freeman: I would also offer to prove through the deposition of Mr. Richard A. Clare, a deposition

that we took in Philadelphia, that Mr. Clare is the assistant manager of passenger sales of the Pennsylvania Railroad, and Mr. Clare would testify that Mr. Holt regularly and as a matter of normal routine prepared reports to Comer and Carpi in Philadelphia on the Chicago transfer negotiations.

That Holt kept Comer advised of everything of sufficient interest that was occurring. That Clare did not have any conversations with anyone about the Chicago transfer situation, but may have seen letters and reports on the subject.

That it was the practice of the Pennsylvania Railroad to procure written memos in multiple copies for the various officers, and that there was no policy against writing memoranda.

I would like to have marked for the purpose of identification as Plaintiff's Exhibit No. 94, this 1198 memorandum coded as P-38-A.

(The said document was thereupon marked Plaintiff's Exhibit 94 for identification.)

That Mr. Clare would testify he had prepared a memorandum to his superior, C. W. G., who is Mr. Getty, which has been identified as Exhibit No. 94, that included in this memorandum is a reference to "return to R.H.C." who is Mr. Clare, "6-13, short resume of Keeshin and Parmelee proposals."

That this short resume could have come from Holt, but the resume could not be found in the files, and that is all I will offer to prove by Mr. Clare.

By Mr. Meserow: Same objection.

By the Court: The same ruling.

By Mr. Freeman: I offer to prove by Mr. Holt, the general passenger agent of the Pennsylvania Railroad—I have no proof, no offer of proof of Mr. Holt, so strike that.

By Mr. Thompson: I want to add to Mr. Meserow's objection that we object to the last two offers on Comer and Clare, and we challenge their good faith.

By the Court: The same ruling.

By Mr. Freeman: I believe we have a stipulation, but in any event, I would like to offer, by agreement,
1199 the Parmelee proposal of March 16, 1955, which was found in the Association's file and coded as A-548 through 551, previously identified as Exhibit 9 in the Padrick deposition and the Parmelee supplemental proposal of May 20, 1955, and also found in the same location as A-547, signed by—

By Mr. Thompson: What numbers are they?

1200 By Mr. Freeman: If you will agree, I will identify them as Plaintiff's Exhibit 95, for the March 15th proposal, and Plaintiff's Exhibit No. 96 for the May 20th proposal, and if Mr. Thompson will wait a minute, I will identify a few others that I think we can agree upon.

By Mr. Thompson: If the Court please, we are not permitting evidence by stipulation or agreement, but if they offer them we do not object.

By Mr. Freeman: I am always amazed, but in any event we are offering those two exhibits, and then these four additional ones.

There is the proposal of Mr. Keeshin of December 15, 1954, which was secured from the Association files and coded as A-165 through A-179, which I would have identified as Plaintiff's Exhibit No. 97.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 95, 96 and 97 for identification.)

1201 By the Court: If there is no objection, they may be received in evidence.

By Mr. Owens: The general objection stands that they are limited to this offer of proof.

By the Court: I didn't hear that?

By Mr. Owens: The objection is that they are limited to this offer of proof.

By the Court: No, I think when they are received in evidence, they are received for all intents and purposes.

By Mr. Freeman: They are received.

By the Court: I would say in reply that that is directly in issue.

By Mr. Freeman: I would like to have marked for the purpose of identification as Plaintiff's Exhibit 98 a letter from Mr. Keeshin to Mr. Bone dated January 15, 1955, coded A-647, and Plaintiff's Exhibit 99, a three-page letter from Keeshin to Bone dated April 6, 1955.

(Thereupon the said documents were marked Plaintiff's Exhibits 98 and 99, for identification.)

By Mr. Freeman: Mr. McConnell suggests that we limit these documents to the issue of conspiracy, and with that limitation I assume that counsel would 1202 have the same objection, and then possibly you would want to reconsider your ruling.

By the Court: These documents you admit are on the issue of conspiracy?

By Mr. Freeman: Yes.

By the Court: Not on the issue—

By Mr. Freeman: We are proposing them on the issue of conspiracy.

By the Court: All right. Same objection and same ruling stands.

By Mr. Thompson: Of course, we would object to the form of any such bob-tailed offer. If they offer the documents subject to checking the documents for accuracy, we make no objection to their being received in evidence.

By Mr. Freeman: Of course, we offer these documents subject to them being checked for accuracy, and I might point out to your Honor that all of these documents are photostated copies of pages taken out of the railroad files.

By the Court: Let me get this straight. You say subject to accuracy, there is no objection to their admissibility.

By Mr. Keating: Will he reiterate what the purpose of his offer is?

1203 By the Court: Counsel offered them strictly for the purpose of proving the conspiracy.

Judge Thompson, as I understand, said subject to accuracy, he makes no objection to their admissibility. Is that right?

By Mr. Meserow: I make objection to them if they are offered for the conspiracy purpose. The same objection.

By Mr. Keating: They have nothing to do with the issue before the Court.

By Mr. Meserow: Nothing relevant to the issue before the Court.

By Mr. Keating: If it is on the conspiracy.

By the Court: On the question of conspiracy, if it is a limited offer, I will sustain the objections.

By Mr. Freeman: Your Honor, I have two additional exhibits in this same category, namely, Plaintiff's Exhibit 100, which is a copy of the final contract executed between Mr. Padrick as agent for the railroads and Mr. Keeshin, dated as of October 1, 1955, but actually executed September 16—no, there is no date indicated of execution—together with the transmittal letter of September 27, 1955, from Mr. Padrick to the terminal lines.

This document and the transmittal letter have 1204 been procured from the Association files and is coded A-467, the contract itself being uncoded.

(Thereupon the said document was marked Plaintiff's Exhibit 100 for identification.)

1205 By Mr. Meserow: This is being offered on the conspiracy proof?

By Mr. Freeman: In the limited way I have suggested.

By the Court: This is the precise contract?

By Mr. Freeman: The final contract.

By the Court: Between Keeshin and the railroads, and you are offering it?

By Mr. Freeman: Yes, to prove the conspiracy, in that limited way.

By Mr. Meserow: Same objection, your Honor.

By Mr. Thompson: We object to any limited offer of the document. If they offer the document, we have no objection to the document being received in evidence subject to checking and also to having the complete document. This apparently is some bobtailed document.

By the Court: If there is no objection, I will receive it in evidence.

By Mr. Meserow: I object, your Honor. The same objection. The purpose of the offer is for conspiracy purposes, and it is not within the issue being tried by this Court. On behalf of my clients, I object to it.

By Mr. Freeman: Your Honor, it isn't a bobtailed offer, as Mr. Thompson would have you believe. It 1206 is the whole contract and it is the best copy we have. There are other copies that may be better than this, but in any event—

By the Court: I will receive it in evidence as far as Judge Thompson is concerned, and I will sustain it as far as Keeshin is concerned.

By Mr. Freeman: Then I also would like—

By the Court: What about Mr. Cross?

By Mr. Thompson: I object to the limited offer. If it is just offered in evidence, I have no objection to it. I

object to the limited offer. I am not going to have it offered and received as evidence only of the conspiracy.

By the Court: I didn't say that. I said I will receive it in evidence, if you make no objection to it, not in a limited way, but in evidence.

So far as their objection is concerned, I can't stop them from objecting, but if there is no objection it will be received in its entirety for all purposes because I can't accept the very essence of a deal, the contract, as limited to a conspiracy on the issue, the very meat of it before me.

By Mr. Thompson: If your Honor please, that is the only way they offer it, is as evidence of the conspiracy.

Now we object to any such bobtailed offer.

1207 If they want to offer it generally, then we will—

By the Court: I will sustain the objection if it is made to conspiracy only.

By Mr. Thompson: That is what they said.

By Mr. Freeman: That is what we did say.

By the Court: I thought you said you did not make an objection to its entirety.

By Mr. Thompson: I am sorry I didn't make myself clear.

By Mr. McConnell: If the Court please, the Court very graciously, I thought, pointed out to us so that we wouldn't be under any inadvertence about it, that there might be in some of these depositions evidence which would not go to the conspiracy issue, but might go to a comparison between this and that and the other thing.

By the Court: That is correct.

By Mr. McConnell: On that, we simply want to advise the Court that we are not going to offer—there are portions in there that would, but we are not going to offer them because of our own general overall contention that the issues—

By the Court: I didn't require you to offer them, Mr. McConnell.

1208 By Mr. McConnell: I understand.

By the Court: All I want is the record to show that I am not blindly excluding something that may have relevance to the issues, and the burden is on you to point out to me those parts which are relevant, if there are any, and if you want to, I will reconsider it, that is all.

1209 By Mr. McConnell: We recognize that, and we appreciate your courtesy in pointing it out to us, but we are not going to offer them.

By the Court: All right.

By Mr. Freeman: Your Honor, my next offer of proof has to do with the matter of damages, and I have assumed from your Honor's statement that this entire line of proof will be rejected at this stage.

By the Court: I don't know what it is.

By Mr. Freeman: I have Mr. Andrews here, who is our accountant, and I would call him to the stand.

By the Court: You say you understand that I would reject evidence on the question of damages?

By Mr. Freeman: At this time, damages to Parmelee; in other words, injury to Parmelee.

By the Court: Oh, you are talking about the accounting now, the covering—

By Mr. Freeman: That is right.

By the Court: Oh, yes, definitely that I will not include at this time because it is not part of the issue before me.

By Mr. Freeman: Yes, rather than to make an elaborate attempt to present—

By the Court: I might add, if I may, Mr. Freeman, that on that score, I think even if we had all of

1210 the issues before the jury, I would expect an accounting to follow a decision one way or the other,

not in the same time before the jury on an accounting. I think that would be the law.

By Mr. Thompson: This is so obviously irrelevant and immaterial to the issue—

By the Court: We understand each other.

By Mr. Thompson: The authorities I have read show there should be no offer of proof of any such character. We object to any offer of proof on the element of damages.

By Mr. Freeman: Your Honor, we have only this problem. In our opinion, Mr. McConnell's, Mr. Lazarus' and myself, in our opinion in order to establish a breach of the anti-trust laws, it is necessary for the plaintiff to show that they had some injury.

By the Court: I have no objection to your making a brief offer of proof.

By Mr. Freeman: I want to do this in the most telescopic way I can so that this element of our case is before you.

By the Court: I have no objection to your making that offer of proof.

By Mr. Freeman: I would offer to prove through
1211 Mr. Fred Andrews, a certified public accountant, who was independently engaged to make this analysis for and on behalf of the Parmelee Transportation Company, and who has been engaged spasmodically, that is, on and off for the last two years, and has spent considerable time in the last few months in this connection;

Mr. Andrews would testify that the Parmelee Transportation Company suspended most of its operations on October 1, 1955; that it attempted to conduct some form of transfer operation from October 1, 1955, until May 1957, when it completely suspended its operation;

That during the period from October 1, 1955, to May 1957, the company suffered losses of some $520,000;

That Mr. Andrews prepared a summary of revenues and expenses realized by the Parmelee Transportation Company from the Chicago Railroad Transfer Service operations, and would present to the jury and your Honor a schedule summarizing this experience over the ten-year period from 1946 through September 30, 1955.

I ask to have marked for the purpose of identification this schedule as Plaintiff's Exhibit 101. I will
1212 give counsel a copy, and if they need additional copies, I will furnish them.

(Thereupon the said document was marked Plaintiff's Exhibit 101 for identification.)

By Mr. Freeman: I would also offer through Mr. Andrews a statement summarizing the income and expense experience of the Railroad Transfer Service, Inc., from October 1, 1955, through December 31, 1959. I ask to have marked and offer in evidence as Plaintiff's Exhibit 102 this statement of summary of income from Railroad Transfer Service, Inc.

(Thereupon the said document was marked Plaintiff's Exhibit No. 102 for identification.)

By Mr. Meserow: Do you have a copy of this?

By Mr. Freeman: I will give you copies of all of these things. I am only handing your table one copy now, but I will have additional copies of these two statements if you want them. It is just a matter of convenience at this point. I don't have the copies right here before me.

I would also offer to prove through Mr. Andrews that the present owners of the Parmelee Transportation Company acquired the stock in 1929 and paid for good will over and above the physical assets of the company
1213 the sum of $1,322,000.

I would offer to prove through Dr. Herbert B.

Dorau, who resides in Bridgewood, New Jersey, and who is a professor of economics and chairman of the Department of Public Utilities and Transportation in the School of Commerce, Accounts and Finance at New York University; that he has been professor in the graduate School of Business Administration in New York University;

That he is the author of a number of books and articles on various aspects of the rate of return problem and the question of the value of earnings in determining the value of properties;

That in 1936 to 1938, he made a detailed analysis of the reports of the Federal Trade Commission investigation of utility accounting and financial practices;

That during the years 1928 to 1932, he was engaged in the field of investment analysis and assisted in the financing of public utility enterprises in connection with investment banking and commercial banking concerns;

That he has acted as consultant to the New Jersey Board of Public Utility Commissioner; and has served on the Port Protection Committee of the New York Port Authority;

1214 That during 1930 and '31 he was a member of President Hoover's Committee on Housing and Home Ownership;

That he is a member of the American Accounting Association, the Controller's Institute of America, the American Institute of Real Estate Appraisers, and the American Society for Traffic and Transportation.

He would testify that he has appeared in a professional expert capacity one or more times before the Public Utility Commissions of Alabama, Arkansas, Oklahoma, Kansas, Louisiana, Illinois, Pennsylvania, Indiana, Virginia, Ohio, New York, Utah, West Virginia, Kentucky,

Maryland, Massachusetts, Vermont, New Hampshire, Maine, Missouri, Rhode Island, New Jersey, Florida, Wisconsin, California, Washington, Oregon and the District of Columbia, and also before the Dominion Board of Transport in Canada;

That he has also appeared before the Federal Securities and Exchange Commission, the Interstate Commerce Commission, and the Federal Power Commission on a number of occasions;

That he has appeared by invitation before professional societies and read various papers on utility valuation problems, including the Technical Evaluation Society, the American Institute of Real Estate Appraisers,
1215 the Edison Electric Institute, the Pacific Coast Gas Association, and the American Bar Association, the Life Insurance Investment Officers Institute of the University of Indiana, at the University of Chicago, at the University of Florida, the Harvard Law School and the Pennsylvania Bar Association.

1216 That he has appeared in a number of transportation cases before the Commissions in Pennsylvania, New York, New Jersey, Massachusetts, Illinois and Indiana;

That he has also been engaged by the eastern railroads to appear on their behalf in the Ex Parte 175 surcharge cases, and has appeared in the matter of the Keeshin reorganization in the United States Federal District Court in Chicago as a consultant to determine the valuation of that enterprise;

He has been most recently engaged by the eastern railroads in the transcontinental freight rate division case which was before the Interstate Commerce Commission in 1955.

Dr. Dorau, on the basis of his experience, would be qualified as an expert to appraise the value of the earn-

ings that Parmelee was denied by reason of this conspiracy and in sum, without my reading various parts of his opinion, Dr. Dorau would render the opinion that the average earnings of the Parmelee enterprise during the last ten years should be multiplied by a factor of 11.11 or capitalized at nine percent as a determination of its value.

May we have a recess? We may be through.

1217 I assume they have an objection to this.

By Mr. Meserow: May I make an objection?

By Mr. Thompson: We certainly do.

By Mr. Meserow: If the Court please, I am going to object to the offer of proof with respect to Mr. Andrews' testimony and Professor Dorau and to Exhibits 101 and 102, Plaintiff's exhibits, for the reason that they are not material to the issue of public injury, and for the reason that they have not complied with Rule 43.

The witness did not get on the stand and testify, and there were no depositions taken of these two witnesses. Their offer of proof is therefore objectionable.

By Mr. Thompson: We object to the form of the offer of proof and to the fact that there is no proper foundation laid for the offer, and we also object on the ground that it is utterly immaterial to the issue of liability even in the broadest sense, and it is immaterial to this issue of public injury in any sense.

If this were a personal injury case and the issues were separated, one, in order to recover damages in a personal injury case, must prove damages, but you certainly wouldn't receive any evidence of damages on an issue of liability. Under the most elementary appli-

1218 cation of the rule of separation of issues you would not receive any such evidence as this.

Now the defendants have a counterclaim here which they propose to prove at some stage, but as I understand

it that will be continued because we can't try it now. As I understand it, there is another counterclaim. Now those issues, I would assume, were going to continue for further consideration at an appropriate time. But to even have this offer of proof made which is violative of the most elementary principles of a proper offer—

By the Court: I agree with you, Judge Thompson, but counsel asked as a special consideration, as a prerequisite to a right of cause of action, they must make some form of an offer, and I have no objection to it going in for that purpose. I exclude it entirely as irrelevant and immaterial to the issue before me. That is reserved under any condition until a future time, if and when.

I will let the offer stand as you gave it, and I will sustain the objection and strike it from the record.

All right, we will take a fifteen-minute recess.

1219 By Mr. Freeman: We may be through.

By the Court: You talk it over. Fifteen-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1220 By Mr. McConnell: May it please the Court, we have nothing further to offer on behalf of the plaintiff.

By the Court: The plaintiff rests?

By Mr. McConnell: The plaintiff rests.

And Thereupon The Plaintiff Rested Its Case In Chief

By the Court: All right, we will give the defendants, in the light of the ruling on the limited issue and in the light of the objections on the various offers of proof, if counsel for the defendants wants until tomorrow morning to figure it out, I think you are entitled to it, and I want

you to have that time so that you will not be expected now to determine what your next step is.

I know what is troubling you. You have expressed it. I have ruled upon it, and I want you to give it due consideration.

Is that what you would like to have?

By Mr. Thompson: Yes, your Honor.

By Mr. Meserow: I think so, yes.

By the Court: I would like to ask one question. That offer of the Keeshin contract in your offer of proof, would you or would you not put into the record the one
1221 question of whether or not that is the contract mentioned in the two cases before the Court of Appeals and the Supreme Court that was filed with the Commerce Commission?

By Mr. McConnell: I don't know what that proceeding is.

By the Court: Is my question clear?

By Mr. Freeman: I understand what you have reference to. Your Honor, I will say for the record because it is a fact, that the contract that was identified as, I think, Exhibit No. 101—

By the Court: The original, the real Keeshin contract.

By Mr. Freeman: That is the contract that was executed by the railroads and Keeshin on September 15, and it was an exhibit in the case of the Atchison, Topeka and Santa Fe vs. The City of Chicago, the case that went from Judge LaBuy to the Court of Appeals and ultimately to the United States Supreme Court.

That contract was an exhibit to the complaint in that case. The issue involved there did not involve the contract, however.

By the Court: What I meant to say was a step further. I know it was the contract, but I think the decision says,

". . . and filed with the Interstate Commerce Com-
1222 mission." I am not quite clear on that.

By Mr. Freeman: I know that the contract was filed with the Commerce Commission, and I am willing to accept the statement from the Railroad Transfer Company if they filed it with the Commission, and I don't know that.

By the Court: I don't recall the decision. I will have to read it again. I know they referred to it as having filed it somewhere.

By Mr. Freeman: Let me read the decision on that and advise you in the morning.

By the Court: Very well.

10:15.

(Thereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Tuesday, May 3, 1960, at the hour of 10:15 o'clock a.m.)

1223 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Tuesday, May 3, 1960,
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.,

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

1224 Mr. John J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1225 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin. The case on trial.

(And thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. Thompson: If the Court please, counsel for the several defendants have conferred in this matter and have examined the record of testimony that is before the Court on the issue which the Court has set for trial and have reached the conclusion there is no evidence in support of the issue of public injury.

Accordingly, I am authorized by the attorneys who are of record for the defendants we do not represent, and I on behalf of the clients I do represent, move for a direction to the jury to return a finding that there is no proof of public injury, in other words, to return a finding for the defendants, and that the Court enter judgment on that finding for the defendants and against the plaintiff.

1226 As the grounds for our motion we state that there is not in the evidence offered by the plaintiff and

received by the Court any proof that the public has suffered any injury by virtue of the awarding of the contract to the Railroad Transfer Service, Inc., which was organized in the summer of 1955, and the contract formally awarded in September of 1955.

We submit that whatever evidence there is in the record on this subject, as offered by the plaintiff, shows that it was to the interest of the public to have the service that was provided by the new contractor.

1227 The public was given new equipment for its use. The passenger vehicles were air conditioned in the summer and heated in the winter.

The vehicles, both passenger and baggage, were dispatched by radio, and the stations were not only manned with passenger agents and baggage agents as they had been in the past, but there was added the service of the stewardesses who were there to give information and direction to the passengers who came into these various stations, and the matter of the difference in the continuity or stability of the service is something of great importance to the public in that it could depend on a continuity of it.

Mr. Keeshin, so the evidence shows, represented to the contracting railroads that he had a firm contract with labor for a three-year period, which assured a continuity of the service for that period as far as labor relations were concerned, and that he had the assurance that there would be peaceful labor relations during the period of his contract.

Mr. Markin, speaking for the plaintiff, at the same time said that the matter was, that an agreement with his

1228 employees still as late as May was still a subject of negotiation, that he did not have any contract with labor following July 1, 1955.

The evidence also shows that he did not arrive at an agreement with his people, so far as 1955, as far as he

year beginning July 1, 1955, until along in September, and that was in 1954, I believe, I am speaking of now, but in 1955 he said he didn't have any agreement.

1229 We think all of these things, if they proved anything, proved that the public was benefited and not injured.

We fail to find in the record any evidence that the public was injured by the granting of this contract to the Keeshin company.

I think the evidence shows—it is very difficult to know what it shows and what it doesn't show. As I remember, it shows that there was no existing contract with the plaintiff company following July 1, 1955. In other words, their oral contract or operating agreement expired on June 30, 1955 so far as there was any agreement.

In any event, it is our judgment there is no evidence in this record supporting the case that has been offered and received, and that judgment should be for the defendants severally.

By Mr. McConnell: May it please the Court, I am not going to attempt to answer Judge Thompson's recitation of evidence.

It was our contention at the beginning and all through the case and it still is that whether or not there is an issue of public injury—and we have very serious doubts about that—if there is such an issue that a public

1230 injury in an anti-trust case is defined by the Congress, and that anything that violates the Anti-Trust Act is inimicable to the public and to the public's interest, then the public is necessarily injured and damaged thereby.

It has been our contention that in an anti-trust case all that is necessary to show is that there is a substantial segment of interstate commerce that is involved; that there is a conspiracy or contract to restrain such com-

merce and to exclude competition therein; and that the complaining party who is the victim of the conspiracy is damaged thereby.

Those are the classic elements of an anti-trust case. I am not speaking academically. I have tried quite a number of these cases in the trial courts and the Courts of Appeal.

Those have been the classic issues up until this case. Of course, as far as I am concerned, when the court that I am before speaks and says the law is different, why, for the moment, at least, that is the law. Still, we have to make a record in our case.

1231 Now we have contended that an issue before this jury, even if we divide up the issues on the area of public injury, is whether or not there is a violation of the anti-trust laws. That we were prepared to prove when we came into this court. We were prepared to prove that there was what we contend a very vicious conspiracy here to deprive the plaintiff in this case of competing for this business in interstate commerce.

Offers of proof have been made along that line. I haven't wanted to clutter the issue with what I consider, as counsel for the plaintiff, matter to be irrelevant to the issue. In other words, we feel if someone in the course of a conspiracy excludes a competitor and gets the business, whether or not he does the business better or worse or equally well, is of no concern under the anti-trust laws; that the real injury to the public is the exclusion of competition.

That issue we have not been permitted to try, and that issue we contend should have been properly before the jury. We contend that we have not had a trial by jury in that issue of this case.

For that reason I don't want to clutter up that issue by entering into a detailed discussion of this evi-
1232 dence.

Your Honor indicated at the beginning, at the outset, and I expressed agreement, that if that was going to be your ruling, that we wanted it so clear in this record that there could be no dispute as to what the issue was.

By the Court: Will you permit me to ask a question, Mr. McConnell?

By Mr. McConnell: Yes.

By the Court: I was not in accord with Judge Thompson's statement that there is nothing in the record of public injury. The fact that he related both sides of the question in claiming that it is a betterment or improvement still leaves some issues for the jury to decide.

Are you still of the same opinion, when you started this case, when you told the Court and the jury—I am not sure about the jury, but you told the Court, for the record, that you do not intend to offer any evidence on the increase in rates or impairment in service?

By Mr. McConnell: No, we haven't offered any evidence.

By the Court: You have not offered any evidence on that.

By Mr. McConnell: We have offered evidence on
1233 conspiracy and what we consider to be a prima facie case of the violation of the anti-trust laws. That is the issue we raised and sought to prove.

I feel that the issue that has been raised here—it doesn't do me any good to reiterate it, your Honor. I have said it and said it.

By the Court: No. I will repeat again, so we understand each other. I am prepared to hold, and I think this jury ought to make a finding as to whether or not there is a public injury. That is the purpose of the jury having been selected, and that is the issue before it.

1234 I much prefer to have it go to the jury on that issue. Unless you concede, as you have indicated now,

that there is nothing in the record to show an increase in rate or impairment in the service—impairment is not the word—inferiority in service.

Now let me go a step further, and let me give you my thinking for the record.

I am firmly of the opinion, and I have read the cases and I have listened to the argument of counsel, and while this issue before the jury is a vital issue, from all of the record before me, not on the pleadings—I am not passing upon the sufficiency or insufficiency of the pleadings. I am not trying to review Judge Sullivan's judgment in the case. But from all of the cases before me, including the two Santa Fe cases which were appealed from Judge LaBuy, went to the Court of Appeals of our own circuit, and finally the Supreme Court of the United States, from all of the law before me now, I am prepared to hold, and I intend to hold, irrespective of the jury's finding in this case, even if they should bring in a verdict of public injury—I am going to discuss that in a few minutes—in my judgment on the proof before the jury, I would dismiss the jury and I would hold that this case does not
1235 belong in the family of anti-trust cases under any conditions, from the entire record before me.

If the plaintiff has any grievance in this case arising out of improper or allegedly improper award of the contract, it was never intended by Congress, it was never intended by our courts, to bring that type of a controversy into the family of anti-trust law.

It is a quarrel between two individual corporations, the Parmelee and the Keeshin company—I don't even remember the name. It is Railway?

By Mr. Meserow: Railroad Transfer Service, Inc.

By the Court: Railroad Transfer Service, Inc.

While there may be, in the first place, the issue in the pleadings was complete, as I pointed out, in my initial

statement which I read, that the plaintiffs charge in their complaint public injury. The defendants have met it by denial, and therefore it brings it clearly within the province of the Court and it is properly before the jury.

1236 Secondly, even if it were not so pleaded or even if it were not so emphatically and specifically pleaded it would have to be proven in any event before the plaintiff could be entitled to the right to recover, but in no event, and I am prepared to follow the many decisions, and I intend to write an opinion on it, that on that score—from the evidence and not from the pleadings has it differentiated from Judge Sullivan's ruling, and that is where all the line of cases come in that you have cited, where the courts have held in the Klor case and the Rogers case and a few other cases that you don't have to spell the thing out.

Where there is a specific violation, the Congress has defined it, and we are bound by it.

This is not the case. It doesn't involve any competitive parties. It doesn't involve any curtailment in commodities or in marketing. It has always been in the hands of one corporation.

It is in the hands of one corporation now, and there was no change in it, and the Courts have held clearly, and I get it from your own briefs, that the railroad companies, all of them, have a right to act concertedly in the awarding of this type of a contract, and that they can give

1237 it to one company, and it is not in violation of any anti-trust law.

Secondly, that has been decided since Judge Sullivan ruled in this case, in this very case, in which the plaintiff is bound, namely, the Atchison, Topeka case in which they intervened, even charged they inspired and instituted it, but that is of no consequence and no importance because they intervened and they are of record, and in those

cases the courts have held unquestionably that this matter of rate and service is within the Interstate Commerce area and jurisdiction, and the City of Chicago can not meddle.

I asked the question yesterday whether or not the new contract was filed with the Interstate Commerce Commission, and I don't have that on the record.

By Mr. Meserow: It was filed with the Interstate Commerce Commission and the Illinois State Commerce Commission.

By the Court: The only inference I have, if I am properly quoting it, is from the United States Court of Appeals and the U. S. Supreme Court Decision. I have no other information except for that.

I am bound by it, because it is part of the record.
1238 Therefore, in addition to holding it is not within the area or the family of anti-trust, it is a matter for the discretion and the judgment of the Commerce Commission and not for the courts to dabble in at this time.

I intend to spell out that theory distinguishing the Klor case and the Rogers case and all the cases cited before me and before Judge Sullivan in the briefs.

Now I will go back to the question before this jury. On what Judge Thompson said I was inclined to disagree with him. I still would like, would much prefer to send the jury out on that one question and let them decide it.

I have a great principle here. One of our tremendous problems in Washington and throughout the country is the anti-trust cases that take five, six, seven, eight months or a year to try whether or not we can separate issues to cut down the overhead of the courts and to have the time, but expedition is not the only issue in the separation of issues.

It is also a great service, in my judgment, for the administration of justice, and while it may meet with dis-

approval of one side or another, that isn't what concerns me.

1239 Am I on the right track in the separating of the issues? I would like to have this jury go out and say there is or there isn't a public injury in this case, and I am of the opinion, I was of the opinion that there was just a smattering of evidence, slight as it may be, and I would like to consider it and reserve my judgment, that there is enough to go to the jury on, but if you admit that there is nothing in the record to justify any increase in rates or any inferior service, I would have to sustain that judgment, because I am not trying this lawsuit. I am following counsel's arguments and reasoning.

You have your choice on just what I have said, and I will abide by your decision.

By Mr. McConnell: My position is and I have tried to make it clear that the issue is irrelevant.

By the Court: I want to be very honest and not mince any words, and I don't want the appellate court to say to me there was something in the record, because there is something in the record. The fact they were cross examined by the defendants on the better service indicates there is some controversy in the record, but if you say there is none—

By Mr. McConnell: I have never stated or ad-
1240 mitted evidence in a case since the time I was admitted to practice where I offered it in bad faith.

By the Court: I never said that. Did I intimate that?

By Mr. McConnell: No; you are not intimating it, but the effect of it would be that I have offered evidence here where I say it doesn't prove anything.

1241 By the Court: No. As a matter of fact, I wanted you to make your record complete over constant objections and arguments from the defense, and I stood solid on my ground that I did not want to short-change the

plaintiff in its right to offer proof to make its record, so that if I am wrong I shall be smashed down by the Court of Appeals in no uncertain terms.

I didn't want to go on any shaky, doubtful or weak proposition. I wanted to go up on the question of fact and on the question of law.

What I said with all due regard to the plaintiff, nothing was done in this case, maybe the stretching a little bit of what the witness may not have said, but I cannot speculate nor can I charge plaintiff's lawyer with wilful and deliberate disregard of the truth. I am not going to do that, and I don't believe in it.

It is maybe a question of interpretation, maybe a question of knowledge that he has something that I don't have. Maybe it is his conclusion, some of the testimony or the depositions.

I have never charged and do not charge now and never will charge any bad faith in this case on the part of plaintiff's lawyers nor on defendants'.

1242 Whatever was injected in this case was injected by me on my rule. I am taking that responsibility solely, exclusively and completely.

The attitude of counsel towards me was something different, but on the trial of the case I have no objection at all. The only question is this, between you and me now. It is not a question; it is just a matter of our respective opinions on this thing.

Do you stand solely on your right to have offered the conspiracy to prove public injury, and without it you do not contend you have enough in the record?

By Mr. McConnell: Well, I am not going to make that concession. I will make this concession, and I think my client agrees with me on it. It is what a lawyer can do with his client's rights. Maybe I had better consult with him. He is here.

By the Court: Yes. I want to say this also, that you and I differ so clashingly on what is the law of anti-trusts. You say that all you have to do is come into a court and show some little meeting of some people behind the scenes and the giving of a contract, and that is anti-trust.

1243 I disagree with it, and I will so state in my opinion. There has to be more than that. There has to be within the interpretation of Congress, and this is not it. We have an honest disagreement.

1244 By Mr. McConnell: We disagree more fundamentally than that. My disagreement is that we have a right to prove conspiracy, not by some little meeting, but over a whole course of dealing, and all the evidence that we wanted to offer.

By the Court: The extent of conspiracy, the seriousness and gravity of it, and, as I said before, and I will say it now, I will never condone it. It does not change the law on anti-trust if it is not originally within that purview, and that is where you and I differ. I am not ruling out anything.

I am merely saying, from what I have heard, and there is more in the record than sufficient to sway me the other way if I were to be swayed legally and not factually. It doesn't bring it within the purview and within the sphere of the anti-trust law.

By Mr. McConnell: On the other question you are asking me to concede something on the record.

By the Court: I didn't mean concede.

By Mr. McConnell: I can't do it without my client's consent.

By the Court: I will submit it to the jury. I will reserve my ruling. As long as I am going to dismiss the jury anyway, I am—

1245 By Mr. McConnell: It doesn't make any difference what the jury does as long as you dismiss them.

By the Court: I will do it on the basis of law on my theory that this does not belong after they bring in a verdict one way or the other, and I will make a finding of fact and conclusions of law that this is not within the family of anti-trust cases.

By Mr. McConnell: Could we have a recess so I can talk to my client?

By the Court: Yes; I will give you twenty-five minutes.

By Mr. McConnell: I don't need that. Give me ten minutes.

By Mr. Thompson: I don't know what the point is that your Honor is making now. I don't quite understand it, but we certainly don't want any moot question submitted to the jury that is not going to be deciding anything.

By the Court: Let me make it clear again. The jury will be limited to the isolated question of public injury, nothing else. I will make a finding of law and fact independent of it of what transpired in my court room in the last seven or eight days.

By Mr. Thompson: All right; we don't need any jury verdict.

1246 By the Court: Not for that.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

1247 By Mr. McConnell: If the Court please, we have offered evidence in this case to show, or which tends to show, purports to show, and it was offered in a good faith effort to show that we did have good service and that we had—

By the Clerk: Just a moment. There is a juror coming out.

By Mr. McConnell: (Continuing)—and that we had in the last two years of the contract, at least, a lower rate because there was a ceiling on our proposal as opposed to no ceiling.

There is evidence here to show that in the last year, which they are paying now, they are paying $1.27 per coupon as against our top limit—

By the Court: The Marshal says the jurors are smothering in there. The air conditioning is out of order. This won't take too long. Go ahead.

By Mr. McConnell: (Continuing)—our top limit of $1.25.

Now, that evidence, if we ever get to an anti-trust case, and we have got a trip upstairs and back again to do that, overruling your Honor's rulings, and we have to do that, that evidence is relevant on various issues in an anti-trust case.

1248 To concede that it isn't the fact, that it doesn't prove that our service is better than theirs, we just can't do. I have talked it over with my client, and while we want to cooperate in any way we can, we just can't do it in view of the over-all situation.

We do believe that it proves that we have better service than Keeshin. We do, however, take the position, as I have said many, many times, that we don't think it makes the slightest bit of difference on the public injury whether we did or we didn't.

Now it seems to me, and I want to suggest this to the Court, one of the reasons for this division of issues, I assume, is to shorten the issues and save expense and time. This is a very expensive proceeding for everybody.

While I as a lawyer shouldn't object probably because I am getting paid, nevertheless it is costing the client money to sit here. If your Honor tells us in advance you are going to direct a verdict anyway, well, it seems to me to the interest of everybody to have the verdict directed at the earliest possible time so that we can have a record made and get on.

1249 By the Court: I didn't say that.

By Mr. McConnell: Well, I misunderstood you

then. I thought you said no matter what the verdict of the jury was—

By the Court: I said regardless of what the jury's verdict will be on the question of public injury, that I will hold independent of that verdict that this case does not belong in the family of anti-trust cases. Therefore, from the evidence offered and put on, it does not belong in the anti-trust case family and should not be prosecuted.

By Mr. McConnell: Well, if you make that ruling, your Honor, with all due deference, I don't see why you can't make it just as well now as later, and the parties are saved the expense of further hearing.

By the Court: No. I want to do it, as I see it, as is proper under the law.

By Mr. McConnell: We cannot, for the reasons stated to your Honor, we cannot make the concession.

By the Court: All right.

The motion will be overruled. The motion of the defendants is overruled.

I am taking it under advisement, as I said before, but I am overruling it at this time.

By Mr. Meserow: Could we have a five minute 1250 recess, please?

By Mr. Freeman: How about until 2:00 o'clock, your Honor?

By Mr. Meserow: All we need is about five minutes.

By the Court: I will give you fifteen minutes, until 11:30.

By Mr. Thompson: Let's adjourn and get the jury out of that suffocating room, if we are going to recess at all.

By the Court: I will give you my private office. Let the jury in the witness room, and open the window. Take them in the witness room.

By Mr. Thompson: We could just as well adjourn until 1:30 or 2:00 o'clock if we are going to adjourn at all.

By Mr. Freeman: Would it be convenient for your Honor to resume at 1:30?

By the Court: Yes, sure. You want to adjourn until 1:30?

By Mr. Thompson: We won't lose any time by doing it that way.

By the Court: All right; 1:30.

(Thereupon a recess was taken in the hearing of the above-entitled case to 1:30 o'clock p.m. of the same day, Tuesday, May 3, 1960.)

1251 * * (Caption—No. 56 C 323) * *

Chicago, Illinois
Tuesday, May 3, 1960
1:30 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. John Borst, Jr.,
Mr. Lee Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

1252 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1253 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

(And thereupon the following further proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: We are ready to proceed.

By the Court: Are you ready?

By Mr. Freeman: Mr. McConnell was here. He should be right back.

By the Court: I will wait.

All right, Judge Thompson, Mr. McConnell is here.

By Mr. Thompson: We are ready.

By the Court: Proceed. Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

By the Court: Good afternoon, everybody. All right, gentlemen.

By Mr. Thompson: Good afternoon. Mr. Padrick, please.

And Thereupon The Defendants, In Order To Maintain The Issues On Their Behalf, Introduced The Following Evidence:

1254 EARL B. PADRICK, called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Will you state your name, please.

A. Earl B. Padrick.

Q. What is your business address, Mr. Padrick?

A. Room 436 Union Station, Chicago.

Q. What is your present position or employment?

A. Chairman of the Transcontinental and Western Passenger Associations and also Chairman of several allied bureaus or agencies.

Q. You know which of the railroads of Chicago are parties defendant to this suit, do you not?

A. I do.

Q. Which of them are members of the Western Passenger Association?

A. The Illinois Central, the Santa Fe and the North Western.

1255 Q. Is there another comparable or similar passenger association that represents the eastern lines?

A. Yes.

Q. What is that?

A. Trunk Line Central Passenger Committee.

Q. Who, in 1954 and 1955, was chairman of that railroad organization?

A. I don't know the exact dates, but Mr. Tony Winkler is now the chairman and was chairman in 1955.

I believe, however, in 1954 that his predecessor was chairman, a Mr. Vanderbilt Arnold.

Q. Which of the defendant railroads belong to that association?

A. The Pennsylvania, the New York Central and the Baltimore and Ohio.

Q. There has been mentioned in the case a group or organization called the Chicago Terminal Lines. What is that, Mr. Padrick?

A. Well, it is a group of Chicago terminal railroads, in this instance being the Chicago terminal passenger carrying railroads.

Q. What composes the Chicago Terminal Lines in the sense that we are using the term here?

A. All of the railroads that terminate in Chicago,
1256 passenger carrying railroads that terminate in the City of Chicago.

Q. Is that a formally organized corporation or association?

A. No, sir; it is not.

Q. Are you an officer or an employee of what is called the Chicago Terminal Lines?

A. I am not.

Q. You have been indicated as chairman or, in some instances, acting chairman of the Chicago Terminal Lines. Will you explain that to us, please.

A. Yes. As a matter of convenience, I act as chairman when they call a meeting. It is usually, I might say several years ago, when there were two passenger associations, one Central and one Western, the two chairmen sat in unison at a Chicago Terminal Lines meeting. Sometimes the chairman of the Central Committee would act. Sometimes the chairman of the Western Lines would act. But the Central Association was combined with the trunk line and moved to New York, and because of that situation it seemed as though it just happened that I would receive the requests from the railroads for calls for such meetings, and having received the requests I would act as chairman of the meeting.

Q. In sending out these calls and in reporting
1257 the proceedings, was it often done in the joint names of you and Mr. Winkler, Mr. Winkler being

the officer of the Eastern group?

A. It was always done that day, unless there was a typographical mistake in the office.

Q. Mr. Winkler, why didn't he preside?

A. His officers are in New York City, and it wasn't convenient for him to be here.

Q. Did you receive any pay as the chairman or acting chairman of the so-called Chicago Terminal Lines?

A. I did not.

Q. Do these lines meet at any regular time, this group?

A. No, sir.

Q. When do they meet?

A. On call.

Q. How do these calls originate?

A. Because of some circumstances that requires attention, something that has to do with the Chicago situation.

Q. What are the subjects considered by this group of representatives of lines?

A. Well, during this period that we are talking
1258 about it was primarily the subject of the transfer between stations in Chicago. But there were also, on the same, at certain intervals, there were other subjects on the docket.

Q. Subjects of common interest to the local lines?

A. Yes.

Q. How long have you been engaged in railroad service in one fashion or another in Chicago?

A. In Chicago since 1937.

Q. Has your connection been with these associations of railroads during all that period?

A. Yes.

Q. How long have you been chairman of the Western Passenger Association?

A. Since 1948.

Q. How long have you been as a matter of accommodation acting as chairman of this Chicago Terminal Lines group?

A. Since that time. I may have acted as chairman of some of the meetings prior to that time, if any predecessor happened to be out of town or was ill.

Q. Who was your predecessor?

A. H. W. Siddall.

Q. In what capacity were you serving when Mr.
1259 Siddall was chairman?

A. Vice chairman.

Q. Now during this period of time that you served in Chicago, have we had this transfer service of passengers and checked baggage between stations in Chicago?

A. Yes.

Q. Tell us the need for that service. What was it for?

A. Well, it was established—do you want me to go into the historical?

1260 Q. No, from your own experience.

A. My experience of it? My experience with it is that it was established because of competitive situation in the City of Chicago as between railroads. I don't know that that was the reason it was established, but certainly that is the reason it was continued, and all during my time, it has been continued for that reason.

There are six main stations and two smaller stations, eight stations in all, in the City of Chicago. Some stations serve only one railroad; others serve several railroads.

Where several railroads are served that could be, or it is a fact that one railroad would come in to a station and another railroad leave from that same station, causing a competitive situation with another railroad that has their facilities cross town or depot facilities cross town. In

order to bring them on a parity, they provided for the transfer.

Q. The Union Station, that is located where

A. Well, it is located between the River and Clinton, and between Jackson and Adams, the Chicago River.

Q. What railroads use that station as a terminal?

1261 A. The Milwaukee, the Pennsylvania, the Burlington, and the GM&O or Alton Route.

Q. Of those railroads that you have mentioned, which is an eastern line?

A. The Pennsylvania.

Q. Serving what principal areas of the country?

A. Oh, Indiana, Ohio, Pennsylvania, I believe Maryland and Delaware, and New Jersey, and a part of New York, New York City.

Q. And the Burlington that you mentioned is a western line, isn't it?

A. It is.

Q. Speaking of the Burlington, that includes passenger trains that operate over what related companies?

A. Well, the Great Northern operate their through trains over the Burlington from St. Paul to Chicago, and the Northern Pacific operate their through trains from the north coast to Chicago over the Burlington from St. Paul to Chicago. They come into the Union Station.

Q. And the Burlington itself operates to Denver and west?

A. It operates to Denver.

Q. And Kansas City, and other stations?

1262 A. And Kansas City.

Q. All right.

What about the GM&O or the old Alton road?

A. Well, they are today primarily a Chicago-St. Louis line.

Q. Anyway, southbound?

A. That is right. At this particular time they also have through train service to Mobile.

Q. Alabama?

A. That is right.

Q. And the Milwaukee is a north and western railroad, is that right?

A. That is correct. The Milwaukee operates through trains over their own line to Seattle, Tacoma, St. Paul, and originally the Union Pacific through trains came in over the North Western at the North Western Station, but later they are now operated over the Milwaukee from Omaha to Chicago and come into the Union Station.

1263 Q. What roads, without our going into detail, are served by the Grand Central Station?

A. The Pere Marquette, C&O, the Soo Line, and the B&O.

Q. And the Soo Line is part of the Canadian Pacific System, isn't it?

A. I believe that it is, yes.

Q. Now then, of those roads, the B&O is an eastern road competitive with the Pennsylvania?

A. That is correct.

Q. The C&O is eastern, southeastern and northeastern?

A. Well, this particular section runs into Michigan.

Q. And the Soo Line goes up through Wisconsin and connects up in Canada?

A. Also competitive, somewhat competitive in connection with St. Paul traffic.

Q. Then the Twelfth Street Station, or the Illinois Central Station generally called, serves what roads?

A. Well, originally it served, of course, the Illinois Central, the Big Four, which is part of the New York Central, and the Michigan Central, which is part of the New York Central, but later the trains that operate over

the Michigan Central were moved over to the La-
1264 Salle Street Station, but the trains operating, the Big Four trains, on that section over to Indianapolis, Cincinnati, still go out of the Illinois Central Station.

Q. The LaSalle Street Station you mentioned, to shorten this up, serves the New York Central System and the Rock Island Railroad?

A. Yes, and the Nickel Plate.

Q. The North Western serves only the North Western?

A. Correct.

Q. And then we have the Dearborn or Polk Street Station which serves what railroads?

A. The Santa Fe, Wabash, Erie, and I may have forgotten one. I think it is the Western Indiana or some suburban service.

Q. The Santa Fe is a western road and the Wabash is a mid-continent road and the Erie is an eastern road, is that correct?

A. That is correct.

Q. From the standpoint of the handling of passengers, is this transfer service regarded as essential or not by the railroads?

A. We think it is essential in that we feel that there
is a requirement upon us to provide through service
1265 for through passengers.

Q. Is the situation in Chicago rather unique as compared with other large cities in the country?

A. Yes, in that they have as many stations as they have, and that all trains terminate in Chicago.

Q. That is, there is no railroad running from coast to coast through Chicago or from the Gulf to the Lakes through Chicago?

A. No through train service.

Q. Is it regarded that taxicab service could be a substitute for this unified service provided by the railroads?

A. Well, it was considered a couple of times, but the carriers have always felt that it is not a substitute for the type of service that we would like to perform or have performed for us, and I speak of us in the general term as railroads, all the railroads.

1266 The transfer service is such that we cannot depend upon taxi cabs. We have found that on days of congestion, that those are on days, particularly rainy days where it is very difficult sometimes to get immediate service of a taxi cab, so there must be a type of service that can, within a very short period of time, transfer passengers from one station to another in order to make train connections.

Q. Who provides this transfer service?

A. Today it is provided by Railroad Transfer Service, Inc.

Q. Well, I mean who pays for it, who provides for it?

A. Well, 99 per cent of the transfer or through service, transfer coupons are furnished by the railroads and paid for by the so-called outgoing terminal line.

Q. Have the railroads over a period of years provided for this unified transfer service by one contractor or another?

A. Yes.

Q. Ever since you have had any connection with the service in Chicago has this been provided by the railroads?

A. Yes.

1267 Q. And the coupon that is used to get this transfer service is included in through tickets, is that it?

A. It is included in through tickets.

Q. So that if one buys a through ticket from a point at a distance outside Chicago to a point at a distance on the other side of Chicago, that coupon is included, is that right?

A. That is correct. It is included free of charge to the passenger if it is within—if it is outside of a radius of 82 miles.

Q. You mean 82 miles from—

A. From Chicago.

Q. From the Chicago center?

A. From a Chicago station. Well, the first highly competitive point is Milwaukee, and the transfer service is given free of charge to Milwaukee, and that sets the charge at which there is from distances less than Milwaukee a graduating amount down to where the passenger, for example, going from Chicago to Evanston would pay the full transfer rate.

Q. And if he is going from Chicago to Racine or Kenosha he would pay some graduated rate between the full and the nothing?

A. That is right. It is based upon the full amount
1268 of the Milwaukee fare.

Q. Was that the situation prior to 1955 as well as subsequent?

A. To my knowledge it has always been the case.

Q. So there is no difference in that aspect of the situation between the service the plaintiff was rendering prior to October 1, 1955 and that now being rendered by defendant Railroad Transfer Service since 1955?

1269 A. As far as the arrangement is concerned, it has always been based upon this Milwaukee situation.

Q. Does that apply where the originating point and the terminating point are east eighty-two miles or less from Chicago?

A. No; it is the destination from Chicago to destination.

Q. So if one were going from Kankakee, Illinois, to San Francisco, California, and he bought his ticket at

Kankakee, would there be included in the through ticket a transfer coupon in Chicago?

A. Yes.

Q. Without charge?

A. Yes.

Q. To the customer, I mean.

A. Yes.

Q. So it is only when they are going from some point lesser than eighty-two miles on each side of Chicago that it is included, that a charge is included?

A. Yes.

Q. In the matter of this transfer contract, arrangements for it, did you have anything to do with that service of the railroads from day to day or week to

1270 week in your capacity as acting chairman?

A. Well, in one of the meetings that was held to appoint a committee to determine whether or not there were others that would offer to provide the service, I was directed to be on the committee. Of course, I never have the right to vote on the committee.

Q. In other words, you are not the representative of any particular railroad?

A. That is right. Regardless of what committee I am on, I never have a right to vote.

1271 Q. And these passenger associations, either the Western or the Eastern you mentioned, have no contractual relation with the Transfer Service Company? The associations as such?

A. I am afraid that I am a little confused by your question.

Q. Well, let's split it up.

Does the Western Passenger Association of which you are chairman, is it a participant in the contract with the transfer company, whatever it is?

A. No, it is not.

Q. Nor is the eastern one you mentioned a moment ago?

A. It is not.

Q. It is a matter of--well, who are the contracting parties?

A. The railroads, terminal railroads of Chicago, the passenger carrying railroads.

Q. Has that been so since you have had any contact with the situation?

A. It has.

Q. Do you know whether there was a written contract covering this transfer service prior to 1955 with the different railroads?

A. There was no joint contract. There was no 1272 individual contract except, I believe, that there may have been two, and I think those were with the Grand Trunk or the Nickel Plate, I can't remember which, and the Erie. Now there may have been contracts with them, and I am not sure of that.

Q. Well, how were these arrangements made then from year to year with the contractor?

A. Oh, negotiations were provided for through meetings either with the Chicago Terminal Lines or by appointed committees, the committees having been appointed by the Chicago Terminal Lines.

Q. How frequently were these contracts or arrangements made? That is, did they terminate annually or did they go from year to year, or what was the arrangement, if you know?

A. Well, generally, whenever there were any difficulties arising in connection with transfer as far as negotiations were concerned, either I would receive a request from the operator, or from some of the carriers to arrange for a meeting.

In many instances the operator's representatives were requested to be present, and in any case where the operator requested that the meeting be called, they were present.

1273 Q. Now prior to October 1, 1955, who was the operator?

A. Parmelee company.

Q. Do you recall who were the spokesmen of the Parmelee Transportation Company, let us say, in 1955?

A. In 1955, Mr. Markin.

Q. Who is Mr. Markin?

A. He is chairman of the board of Parmelee company. I believe that is his title.

Q. That is Mr. Morris Markin?

A. Correct.

Q. Do you know where he lives?

A. Kalamazoo.

Q. Michigan?

A. Yes, sir.

1274 Q. And with whom did Mr. Morris Markin, during 1955, let us say, have conferences?

A. I want to correct my statement to this extent. In some instances there was a Mr. Rhetigen in 1955 that I had some negotiations with.

Q. That is R-h-e-t-i-g-e-n, isn't it?

A. I believe that is the way you spell it, but I am not sure. I would have to see it in writing. I don't remember how it is spelled.

Q. Well, Mr. Rhetigen, as you understood it, at least, was connected with or was an officer of Parmelee Transportation Company?

A. Yes, sir.

Q. And when did he come into the picture, if you recall, approximately?

A. Well, it was shortly after a Mr. Passolt passed away. I believe that was in 1953, the latter part of 1953.

Q. Do you know what capacity Mr. Passolt served in while he was here?

A. Yes, he had the title of President.

Q. Who prior to Mr. Passolt was president of the transportation company that had to do with this local problem?

1275 A. A Mr. Landman.

Q. Where was he located, at least in the most part?

A. In New York City.

Q. Now in your contact with the Parmelee Transportation people, whoever were their spokesmen at the different periods, did they confer with you sometimes privately, that is, as the acting chairman without a meeting of some kind?

A. They could, yes, on certain occasions they could have called on me and talked about certain things.

Q. And if they made a proposition for some adjustment of some kind, either in the service or the cost of the service, how did they communicate that to you?

A. Well, sometimes the first meeting could be of a personal nature, just call and talk about it, but in each instance when it was a request for increased rates, it was always, and I always required that this be placed in writing by the operator and that proposition, whatever it was, was submitted to the Chicago Terminal Lines or to the committee that had been appointed for the handling of such matters.

1276 Q. If there was a committee, it was communicated to the committee?

A. That is correct.

Q. And if there wasn't, what did you do then?

A. It went to all of the Chicago Terminal Lines.

Q. What did you do, call a meeting?

A. Generally a meeting was called based upon whatever the request happened to be, or there may have been some instances that I delayed calling a meeting until a carrier, one of the carriers asked for it.

By the Court: May I interrupt one second?

I would like to tell the jury, the plaintiff has rested. The defense is now putting in its side.

I should have told you that at the outset, so you will know the proceeding. Is that clear?

I didn't mean to interrupt, Judge, but I thought they ought to know.

By Mr. Thompson: I assumed they knew who was doing the examining. At least, they knew they had a change
1277 of pace anyway.

By Mr. Thompson:

Q. Mr. Padrick, what about when there were problems of labor negotiations between Parmelee and its employees? Was that communicated to you?

A. Yes, sir.

1278 Q. Going back only to 1947, do you recall a communication from the Parmelee company with respect to their labor situation in 1947?

A. Yes. We had been advised by the Parmelee people that there was a possibility of a work interruption, and that there was a meeting called of the Chicago Terminal Lines in which the representatives of Parmelee participated.

Q. Do you recall who were the spokesmen of the Parmelee Transportation Company in the 1947 meeting?

A. Well, I do remember that at that time a Mr. Landman was in charge, and I am quite sure that he attended the meeting that I have reference to.

Q. What is your recollection as to when this was? Do you have any idea of the date in 1947, the time?

A. I couldn't be positive as to the date, but it seems to me that it was in July.

Q. Was there a period each year when these negotiations occurred according to the information you have?

A. Yes.

Q. When did the arrangements that Parmelee company had with its employees terminate, according to your experience?

A. July 1st.

1279 Q. Do you know whether or not they had any contract between the employees and the employer that extended over a period longer than a year?

A. I have never been advised of such a contract.

Q. Now, this July meeting that you speak about, what occasioned that meeting in July?

A. Well, we were informed prior to the call of the meeting that there might be some difficulties and there might be some work interruptions, and it was necessary for us to find out definitely what was going to be done about it so that we could prepare—I say "we,"—the railroads could prepare themselves for the eventuality of a work interruption. The discussion at the meeting—as I recall, there were two meetings that were held, either one in the morning or one in the afternoon or one, one day and one the next day. I can't tell you exactly whether that is what the date was, but it was in July, and I believe it was the latter part of July.

We were advised that the negotiations had come to a standstill, and there would probably be some kind of work interruption.

Q. Do you recall who advised you? Do you remember who the spokesmen were?

1280 A. Yes, it was the Parmelee representatives.

Q. Yes, I know, but do you remember the individual who advised you?

A. I am sure it was Mr. Landman.

Q. Was the first meeting that you had a meeting with the representatives of the Parmelee people?

A. Yes, they were there.

Q. Was it also a Terminal Lines' meeting, one of these large ones with representatives from all twenty-one of the railroads, or was it a sub-committee meeting, or do you recall?

A. Well, I don't recall whether it was a sub-committee meeting or a general meeting. I would say it was a general meeting.

Q. Was there a resolution made of the problems so far as the lines and Parmelee were concerned at this first meeting?

A. Yes, there was. That was the first time that I know of that the carriers had arranged for the handling of passengers by the payment of 60 cents to each passenger presenting a through coupon, the 60 cents to represent at least an average of the taxi cab fare between stations.

1281 Q. Was that action that was arrived at or that solution recorded in some sort of proceedings or report of proceedings?

A. Yes, sir, it was.

Q. How did you usually do that sort of thing at your meetings, this matter of keeping a record of what happened?

A. Well, in some instances it depended upon how many subjects were on the docket, how broad the issues might be.

In the early days it so happened that my chief clerk had been a court reporter and could take shorthand, and he would take the action that was taken, and he would write it up in a draft form, and from that draft I prepared the proceedings.

Q. Did he undertake to report verbatim what was said back and forth?

A. No, he couldn't do that.

Q. Well, these notes or minutes, or whatever you call them, were they preserved?

A. No, at none of my meetings. The fact of the matter is, part of the record was that there would be no verbatim kept of any of the meetings that I presided over. That is true generally in connection with
1282 these railroad meetings for the purpose of trying to get a broader discussion of subjects, and if every word that everybody said in some of those meetings were kept, I think that perhaps on some of the subjects there would be a lot of silence.

Q. What about the reporting of these proceedings, how are they reported?

A. The action that was taken was always reported as a proceedings of the meeting.

Q. What you mean is about not taking the verbatim report is that the debates were not recorded?

A. That is right. The final action was taken down, and that was made into a proceedings, copies of which are all over the place.

Q. And after the minutes or proceedings, as you call them, were written up, what was done with them?

A. They were promulgated to the interested lines.

Q. That is, mimeographed copies were made and sent out to all of the lines?

A. That is right.

Q. By the way, who did this manual work of preparing these proceedings, mimeographing them, furnishing the paper and the postage and what have you?

A. That was done in my office.

1283 Q. And then if there was any accumulated expense, what was done with respect to taking care of that?

A. Well, we have an arrangement between these various associations where joint work is done one for the other, that we bill the cost of that particular work pro rata between associations, and that is the way it was handled.

Q. In addition to sending copies of these minutes, that have to do with the local station-to-station transfer business, to the interested railroads, did anyone else get copies?

A. Yes. Usually whoever sat in the meetings got copies of the proceedings.

Q. As to this matter of these applications of Parmelee Transportation Company for increased pay or reporting their labor difficulties or anything like that, your proceedings recording that, were they sent to Parmelee also?

A. If they sat in the meeting, they got copies.

1284 By Mr. Thompson: Mark this document as Defendants' Exhibit No. 7, for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 7 for identification.)

By Mr. McConnell: Can we see that before you start with the witness so we can get our document on it?

By Mr. Thompson: Certainly.

We also ask to have this one marked as Defendants' Exhibit No. 8, for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 8 for identification.)

By Mr. Thompson:

Q. I show you Defendants' Exhibit No. 7, for identification, and ask you whether or not that is a report of proceedings of your discussion with the Parmelee Transportation group on or about July 29, 1947.

A. This so happens to be a report of my predecessor. However, I was in the meeting.

Q. Does that memorandum contain the tentative
1285 arrangements that were made in the event of this interruption of service?

A. It contains part of it, not all of it. It pertains to the part of the handling of the passengers, but it does not pertain to the part other than to suggest a further meeting with others concerning the handling of the checked baggage.

Q. Were Parmelee representatives present at that meeting that is reported in these proceedings?

A. Yes, sir.

Q. Who was present, if you recollect, or if this refreshes your recollection?

A. Mr. Landman, Mr. Scheeder and Mr. Passolt.

Q. You have mentioned Mr. Landman as a former president. Who was Mr. Scheeder?

A. Vice-president.

Q. And also Mr. Passolt, I think you said, was a vice-president?

A. I believe he was vice-president at that time. I am not sure of his exact title at that time.

Q. Were all there of them present at this conference with the lines?

A. I would say they were.

Q. Does that appear to be a report of proceedings
1286 of the discussion between the Terminal Lines' representives and the Parmelee representatives?

A. Yes.

Q. It is not some sub-committee action?

A. No, sir; it is the Terminal Lines.

Q. Was there some part of the solution of the problem postponed at that meeting?

A. Yes, that part that pertains to the handling of checked baggage.

Q. I note on this document an admonition to not broadcast these proceedings. What was the purpose of that, if you recall?

A. Well, the only reason that I can recall is that of the possible labor difficulties, and it was not desired at that particular time to broadcast this while the negotiations with labor were still going on.

Q. Do you recall what Mr. Landman or Mr. Passolt, or whoever the spokesman was for Parmelee, told you about their labor situation at that stage on July 29?

A. My recollection of it is as written here in this document. It says here:

"And in connection with that a brief outline was given by Mr. Landman concerning the conditions
1287 that might possibly bring about an interruption of service."

Q. How long had this negotiation of the settling of the labor problem been continuing when this meeting was held?

A. I am not positive. I am not sure how long.

Q. Was it represented to you when the contract with their labor folks had terminated, the previous contract?

A. July 1.

Q. And this was July 29, was it?

A. The 30th.

Q. July 30th?

A. Yes.

1288 Q. What about the labor, I mean the baggage problem; when was that discussed or taken up?

A. It was taken up the following day.

Q. On July 30th, and the following day would be the 31st. I show you Defendants' Exhibit No. 8, for identification, and ask you if that refreshes your recollection as to the day on which it was considered?

A. Well, this is the proceedings of the meeting of August 1st, so it would have to be August 1.

Q. Who was present at that meeting, without naming the individuals?

A. Several representatives of all of the Chicago Terminal Lines, including their baggage handling representatives. I can see from the names here that also all of the stations were represented. Parmelee representatives were not in attendance at this meeting.

Q. Had there been some action taken—

A. By the way, I notice here that I presided at that meeting.

Q. On July 30th when you had this meeting with the Parmelee people, was there action taken with respect to calling this meeting of August 1 and inviting the 1289 station people and the baggage people who could give specific information on this baggage problem?

A. Yes. That is the reason that only the passenger end of it was handled with the passenger people. They wanted to have their baggage and operating representatives in attendance, which I thought was the following day, which now appears to be August 1, and I say operating representatives, and I mean the superintendents of transportation and their baggage representatives because of the method that was thought would be necessary in connection with handling the checked baggage.

Q. Had Parmelee stated whether or not it could make arrangements to take care of handling the baggage in the event of a strike?

A. They indicated that they could not handle the checked baggage or the passengers.

Q. And are the minutes that you have in front of you, the proceedings, Defendants' Exhibit 8 for identification, a true report of the events that took place on that day of August 1, 1947, and also the action taken?

A. Yes, sir.

Q. Was that made in the regular course of busi-
1290 ness of the terminal lines?

A. Yes, sir.

Q. And was it the regular course of the business of the terminal lines to keep a record of the proceedings of these meetings?

A. Of the terminal lines to keep them?

Q. To keep a record of the proceedings of its meetings where actions were taken?

A. It was usually up to the presiding officer to make a record and promulgate the record. Whether they kept them or not, I wouldn't know.

Q. You don't get my point. I don't mean did they physically carry them around with them. Was it their business to keep a record of the proceedings that they had at the meeting?

A. Yes; I was directed to so do.

Q. And these two documents, Exhibits 7 and 8, both of them are of that character, are they?

A. They are.

Q. Well, was the labor difficulty finally resolved in 1947 so there was not a strike?

A. There was no work interruption that year.

Q. What about 1948?

A. Well, in 1948 we had advice of a similar
1291 situation, and the terminal lines were alerted to be prepared to put this arrangement into effect in the event of a work interruption.

1292 Q. Well, was it resolved that year without interruption?

A. Yes, sir.

Q. What about 1949?

A. In 1949 generally we had a situation that had developed to a point where there might be some work interruption, and we were informed of that.

Q. By whom?

A. As I recall, we were informed verbally that that might take place, and, as I recall, that was by Mr. Passolt.

Q. And then what did you do?

A. I advised the carriers to be prepared to place this arrangement in effect in the event of a work interruption.

Q. By "this arrangement," you mean the arrangement that had been agreed upon in 1947?

A. That is right.

Q. What about 1950?

A. In 1950 the arrangement came to a standstill, and there was a strike, and these arrangements were placed into effect.

Q. How long did that strike last in 1950, approximately?

1293 A. Approximately six months. I might say that during the period of the strike there was a slight change that had to be made in the program as adopted. It called for the transfer of railroad cars between stations, six stations, an embargo on the handling of checked animals through Chicago, and a two-a-day car switch between stations because of the congestion on the switch trackage where it had to be changed to one switch a day.

Q. And that was in carrying out the matter of the transfer of baggage? That was to be done by baggage cars and a switching operation?

A. That is right. They call them trap cars. I don't know why. That is what the operating people call them.

Q. There is nothing unusual about railroads having terms that nobody knows what they are except railroads, is there?

A. I guess that is right.

Q. What about the passengers?

A. The passengers, arrangements were made for the railroad passenger representatives to meet the oncoming trains and to have cash on hand to give each passenger presenting a transfer coupon 60 cents.

1294 Q. Was that done?

A. It was done.

Q. And these folks then were to go out and find their own taxi cab and make their own trip across town, is that correct?

A. That is correct.

Q. Do you know whether the plaintiff here, the Parmelee Transportation Company, owned the Yellow Cab service here in Chicago?

By Mr. McConnell: I object to that. The best evidence of that would be something else besides hearsay.

By the Court: A little louder, please, Mr. McConnell.

By Mr. Thompson: I only asked him if he knew.

By Mr. McConnell: I objected on the ground that the evidence of that would be something other than hearsay.

By the Court: I think so; that is correct.

By Mr. Thompson: If he knows it might not be hearsay.

By the Court: If he will say he knows, then ask him what is the source and then we can pass upon it.

1295 By Mr. Thompson:

Q. All right. Did you talk to the Parmelee Transportation people about who owned the Yellow taxi cabs in Chicago?

A. Yes, I had.

Q. Who told you, if anybody?

A. Mr. Markin.

Q. What did he tell you?

A. He has informed me that they were part owners of

the Yellow Cab Company.

1296 Q. What about the Checker cab?

A. Checker Cab Company, I can't recall that he told me that.

Q. Getting to another subject, do you know what the transfer charge was prior to 1942, the coupon charge?

A. Seventy-five cents.

Q. Then what happened in 1942?

A. Eighty-five cents.

Q. Then how long did it remain eighty-five cents?

A. I don't know the exact date, but it went to a dollar.

Q. From eighty-five cents to a dollar?

A. Yes.

By Mr. Thompson: I will ask that these documents be marked, respectively, Defendants' Exhibits 9, 10, 11, 12, and 13, for identification.

(Thereupon the said documents were marked Defendants' Exhibit 9 through 13, inclusive, for identification.)

By Mr. Thompson:

Q. Directing your attention to Defendants' Exhibit 9 for identification, I ask you to look at that and

1297 see if it refreshes your recollection as to the time and amount of the demand and the increase requested?

A. It is a letter from Mr. Landman, president of the Parmelee Transportation Company, dated July 29.

Q. What year?

A. 1947, and states that it is imperative that the rate be adjusted to one dollar effective July 1.

Q. 1947?

A. 1947.

Q. Was this call of the meeting promulgated to the representatives of the passenger terminal lines in Chicago?

A. It was, yes.

Q. Was this a call that was issued in the regular course of business by you and—

A. By my predecessor.

Q. Mr. Siddall and by Mr. Chown, the predecessor of—

A. Mr. Armold; he is the predecessor of Mr. Armold. Yes, it is.

Q. In other words, jointly by the two associations we mentioned a while ago, representing the western and eastern railroad lines?

A. That is right.

1298 Q. I call your attention to Defendants' Exhibit 10 for identification, and ask you if that is a report of the proceedings of the Chicago Terminal Lines of August 7, 1947, respecting this request for increase and also respecting threat of cessation of service?

A. Yes, sir, it is.

By Mr. McConnell: I object to the characterization. I think the document speaks for itself.

By the Court: I will sustain the objection.

By Mr. Thompson: What part of the characterization, the report?

By Mr. McConnell: Your characterization of the document as a threat. I object to that. The document speaks for itself.

By Mr. Thompson:

Q. All right. Is this a report of the proceedings of that meeting of August 7, 1947?

A. It is.

Q. Did the meeting deal with the two subjects of the request for an increase of the coupon and also with the subject of possibility of interruption of the service?

1299 A. It did.

Q. Does that recite this understanding of making the tentative arrangements to handle the passengers if interruption did occur?

A. It does.

Q. These two documents are documents prepared in the regular course of business for the terminal lines?

A. They were.

1300 Q. Was this matter of the increase from 85 cents to a dollar for the coupon that was requested in the letter of July 29, 1947 resolved during 1947?

A. I know it was resolved, but I can't tell you the exact date. I believe it was later in that same year.

Q. Well, I will bring to your attention a couple of documents.

Defendants' Exhibit 12 for identification purports to be proceedings of the Chicago Terminal Lines of January 16, 1948. Will you take a look at that and see if that refreshes your recollection as to whether it was resolved in 1947?

A. It was January 1, 1948 that the $1.00 went into effect.

Q. It went into effect then.

Directing also your attention to Defendants' Exhibit 13 for identification, does it indicate when the meeting was held which made a resolution of this problem?

A. January 16, 1948.

Q. Were the Parmelee representatives in attendance at that meeting of the representatives of the Terminal Lines?

A. They were.

1301 Q. Do you recall who represented the Parmelee people at that meeting in January, 1948?

A. Mr. Markin, Mr. Scheeder and Mr. Passolt.

Q. Were copies of those proceedings sent to the Parmelee people?

A. They were.

Q. Now were there any other written confirmation of the arrangements or agreements you would make with

the Parmelee people other than these minutes that were promulgated between the Lines and Parmelee?

A. None as far as I know.

Q. If it was anything, it was an exchange of letters or something like that?

A. That is correct.

Q. For instance, this Defendants' Exhibit 13 for identification, that appears to be what?

A. It is a letter from my predecessor to Parmelee Transportation Company, dated January 24, 1948, with copies to Mr. Landman of Parmelee and to Mr. Chown, who at that time was chairman of the Trunk Line Central Committee, passenger committee, with copies also to the Chicago Terminal Lines.

Q. And that confirms the increase from 85 cents to a dollar?

1302 By Mr. McConnell: I object to that. I have been quite patient about this, I think, down to date, and I don't want to be captious about this, but if he is going to put these documents in, they ought to go in through evidence, and not have the witness characterize them.

By the Court: I will let the witness answer but I will sustain—

By Mr. Thompson:

Q. It is the letter on the subject, isn't it, rather than just minutes?

A. It is a letter on the subject announcing the increase.

By the Court: We will take a ten minute recess.

(Thereupon a short recess was taken.)

1303 By the Court: All right; bring out the jury.

(Whereupon the following proceedings were continued in the presence and hearing the jury:)

By Mr. Thompson: Mark this as Defendants' Exhibit No. 14, for identification.

(Thereupon said document was marked Defendants' Exhibit 14 for identification.)

By Mr. Thompson:

Q. I direct your attention to the document I have marked as Defendants' Exhibit No. 14, for identification, which bears date of January 8, 1948.

Do you have any recollection of the discussions you had with Mr. Markin of the Parmelee Transportation Company during these negotiations for the 1948 increase with respect to his attitude toward continuing the service?

A. At the time that these negotiations were going on, it had been indicated by Mr. Markin of the possibility of discontinuing the service.

Q. Does that indication have any connection with the request of the increase from eighty-five cents
1304 to one dollar for a coupon?

By Mr. McConnell: I object to him testifying

By the Court: Yes; it is leading.

By Mr. McConnell: I object to his being led and having a document before him. If he wants to identify these documents and put them in evidence, I have no objection.

By the Court: He may inquire, but not lead.

By Mr. Thompson: I was only directing his attention to a subject, your Honor, if you please.

By the Court: Not the amounts. To discuss the price, that is something else.

By Mr. Thompson:

Q. Well, did this conversation, or I mean this indication of discontinuing the service have anything to do with the pending negotiations respecting the coupon rate?

A. Twice to my knowledge in negotiations, the exact dates of which I cannot recall at this time, but there
1305 were twice to my knowledge that Mr. Markin indicated that unless from the price of the coupon he

could obtain at least a ten percent return, that he would not be interested in the performance of the service, continued performance of the service.

1306 Q. Do you recall whether or not one of these instances was during the 1948, the 1947-1948 negotiations?

A. Not positively.

Q. Does the document which I have marked refresh your recollection as to the time of one of such representations?

A. It does.

Q. What is that date?

A. January 8, 1948.

Q. All right.

Now, then, with your recollection refreshed, can you say whether or not he made, whether or not Mr. Markin made such a suggestion or statement during the 1947-1948 negotiations?

A. I believe he did.

Q. Was there a time following the 1947-1948 negotiations when there was a further request for increase in the coupon rate by Parmelee Transportation Company?

A. Yes.

Q. Do you recall when that was?

A. Not the exact date. I know how it was settled, but I don't know the exact date the request was made.

Q. Sir?

1307 A. I don't know the exact date that the request was made, but I know what the final settlement was.

Q. Well, do you remember what year the second or the next settlement, rather, came into effect, approximately what year?

A. I believe it was in 1949.

Q. What was the amount of the increase, if you remember?

A. Well, it went to $1.05.

Q. The one you are thinking of is the time when the rate was increased from $1.00 to $1.05, is that correct?

A. That is correct.

Q. When was the next problem with respect to the increase of the transfer charge?

A. The question came up again during the time of the strike in 1950.

1308 Q. Well, do you recall whether there was any adjustment of the ticket at that time or was there just some adjustment in gross or something of the sort, or do you know?

A. No, there was no adjustment made in the coupon charge at that time. As I recall in the negotiations there was the basis for payment providing the coupon, number of coupon level did not increase beyond a prescribed level. The papers for that, however, are all in my files, and I believe that for the first two months of that arrangement — that arrangement, however, brought about the settlement through that arrangement and through the negotiations of Parmelee Company with their employees. The strike was settled and, as I recall, there was a couple of payments made in connection with a flat amount that represented less coupons that was agreed upon being on it.

Q. All right. When did the next matter of an increase charge come about, if you recall?

A. It was either 1951 or 1952. I don't recall the exact date.

Q. Isn't that when the $1.00 to $1.05 went into effect, now refreshing your recollection?

1309 A. It could have been. These changes, the specific dates on which the changes were made and the negotiations become a little confused after these many years.

By Mr. McConnell: Why don't you give him the documents? Let him look at them. We have no quarrel with those dates.

By Mr. Thompson: I appreciate you don't. That is the reason I led the witness. There is no document on the $1.00 to $1.05 that we have.

By Mr. Freeman: There is a document.

By Mr. Thompson: There may be. I don't have it.

By Mr. Freeman: Do you want it?

By Mr. Thompson:

Q. Anyway, it was increased from $1.00 to $1.05 in 1952, apparently by agreement.

By Mr. McConnell: No question about it.

By Mr. Thompson:

Q. Now when did the next matter of coupon charge come on for consideration?

A. It was in early 1954.

Q. Do you remember what the request was at that 1310 time of the Parmelee people?

A. I believe there were some overtures made that would indicate that it was necessary to have $1.32.

By Mr. Thompson: I ask that this be marked Defendants' Exhibit 15 for identification.

(Thereupon the said document was marked Defendants' Exhibit 15 for identification.)

By Mr. Thompson:

Q. I call your attention to what purport to be proceedings of the meeting of the lines on January 29, 1954, which has been marked Defendants' Exhibit 15 for identification, and ask if reference to the first part of the proceedings on the third page there indicate the request that was made, the formal request for coupon rate?

A. From $1.05 to $1.25 was the settlement.

Q. That was the request.

A. Pardon me. The request was from $1.05 to $1.25, retroactive to January 1, 1954.

Q. Yes. Now had the matter been orally discussed in the fall of 1953 with Parmelee representatives of a desire for increase prior to the formal application
1311 in 1954?

A. It had.

Q. Do you remember who was present at the oral discussion representing Parmelee?

A. Mr. Markin.

1312 Q. Who representing the Lines?

A. Well, I was representing the Lines.

Q. Were there just the two of you or were there several in this conference in December, 1953, if it was December?

A. Well, there were others present.

Q. You don't recall who?

A. No, not at this time.

Q. Now was there a formal application, a written application for this request of increase from $1.05 to $1.25 retroactive to January 1, 1954?

A. There was.

Q. What was the date of that formal request?

A. I don't know the exact date of the request. It was—it had to be immediately prior to January 29.

By Mr. McConnell: January 29, what year?

By the Witness: 1954.

By Mr. Freeman: Mr. Thompson, could you let me see that document so we can try to find it among our papers, or identify it for me so that I can find it.

By Mr. Thompson:

Q. I call your attention to a document which has already been marked Defendants' Exhibit 5 for
1313 identification, and which purports to be a call of a meeting of the Lines for April 15, 1954, and ask you whether that meeting was held April 15, 1954.

A. There was a meeting called for April 15 for the Chicago Terminal Lines and April 16 for a meeting of the Chicago Terminal Lines with representatives of Parmelee Transportation Company.

Q. Were those two meetings held?

A. They were.

Q. Now do you have in those proceedings what purports to be a communication from Mr. Markin to you respecting this request for an increase?

A. We do.

Q. What date does that document that is before you bear, which is a part of this Defendants' Exhibit 5?

A. April 5, 1954.

Q. Do you recall that there was an earlier communication which this supplements?

A. There is reference made in this document to a communication of January 20, 1954, addressed to me, requesting the increase from $1.05 to $1.25 retroactive to January 1, 1954.

1314 Q. Is that the communication to which you earlier reported of a communication some time prior to January 29?

A. Yes, sir.

Q. From whom did you receive this communication?

A. From Mr. Markin.

Q. How did he sign himself to that communication?

A. Chairman of the board, Parmelee Transportation Company.

Q. Does that communication of January 20, 1954, make reference to the time when you had your oral meeting, I mean your discussion in person or orally?

A. December 10, 1953.

Q. And Mr. Markin so indicates in his own letter, is that it?

A. Yes.

Q. Is there anything in there to indicate who was present at the December 10, 1953, discussion that you noticed?

By Mr. McConnell: If the Court please, I have no objection to this if he is going to put these documents in evidence, but I do object if he is letting the wit-
1315 ness tell us the contents of documents which have not been offered in evidence.

By the Court: Is that the same document you said was in evidence, Judge?

By Mr. Thompson: No; I said it had been marked.

By the Court: Objection sustained.

By Mr. Thompson: The question I asked was if there was anything in this document which would refresh his recollection of who was present at the December 10 meeting.

By the Court: If that was the question, it was all right.

By Mr. Thompson: That is my question.

By the Court: He must exhaust his recollection, and then he tells the jury he doesn't remember any more, and then he can refresh it.

By Mr. Thompson: I appreciate that, your Honor, and he did so say three or four minutes ago he didn't remember who was at the meeting.

By the Court: He didn't remember the substance of the meeting.

1316 By Mr. McConnell: As I understand the question—

By Mr. Thompson: I won't spend any more time on it. It is unimportant as the document speaks for itself, as has been indicated.

By Mr. McConnell: That is what I said, and that is the basis of my objection.

By Mr. Freeman: Will you tell me what the number is of that exhibit?

By the Court: Judge Thompson, did you hear his question?

By Mr. Thompson: Yes. I am trying to think of three things at once.

By the Court: I didn't know whether you heard it or not.

By Mr. Thompson: The document is Defendants' Exhibit No. 5, for identification, and is purports to be a record of the meeting that was held on April 15, 1954, of the Chicago Terminal Lines and on April 16, 1954, of the lines with Mr. Markin and his other representatives, and it consists of a lot of pages.

1317 By Mr. Thompson:

Q. Was there submitted to the lines at that time tabulations which were furnished by the Parmelee people in support of their request for this increase from $1.05 to $1.25?

A. There were.

Q. Was there a subcommittee appointed to negotiate with the Parmelee people with respect to this request?

A. I believe there was.

Q. Was that a different subcommittee than the one that was appointed to survey the whole situation?

A. I believe it was the same committee of railroads. As far as the individuals were concerned, there may have been a difference.

1318 Q. Did you sit with this sub-committee that was considering the Parmelee request?

A. I did.

Q. During the course of your discussions with the representatives of the Parmelee company with respect to this request for increase, was there any request made of them to support their request?

A. There was.

Q. What was that request?

A. The first request was for a so-called profit and loss statement.

Q. Was this the first time you had ever requested such a thing from Parmelee?

A. No, sir.

Q. When prior thereto did you make such requests?

A. A similar request was made back in 1947.

Q. Was a profit and loss statement ever furnished by the Parmelee Transportation Company?

A. Not a profit and loss statement, no.

Q. Were there some sorts of tabulations furnished by Parmelee in 1954?

A. There were.

Q. During the course of the discussion was there a representation made by Mr. Markin as to how much
1319 of a coupon charge he needed, really needed to meet the cost, the increase in cost and the decrease in volume of the transfer of passengers?

A. Yes; there was presented at that particular time a memorandum indicating that because of the loss of —

By Mr. McConnell: Object to that. If it is in the memorandum, I think the memorandum would be the best evidence.

By the Court: Are you referring to a conversation?

By the Witness: I am referring to what was presented to us by Mr. Markin.

By Mr. Thompson:

Q. All right.

Now, about the conversation that occurred. During the course of the discussion did Mr. Markin make any representations as to amounts that were needed?

A. Yes; it went to as high as $1.50.

Q. You mentioned a while ago something about $1.32 or $1.35. Was that something that occurred in these discussions?

A. It did. It finally got down to that.

Q. You carried on these negotiations for how long before you reached the settlement of them? These
1320 papers I just handed to you, as you may recall, were dated April 15 and April 16, and they refer to meetings at that time.

Do you recall whether you came to a resolution of the problem at these April 15 or April 16 meetings, or was it beyond that?

A. It was beyond that, but how long I can't recall at the moment.

By Mr. Thompson: Mark this as Defendants' Exhibit No. 16 for identification, and mark this as Defendants' Exhibit No. 17, for identification.

(Thereupon said documents were marked, respectively, as Defendants' Exhibits Nos. 16 and 17 for identification.)

By Mr. Freeman: Mr. Thompson, would you let me see them so I can find them, please?

By Mr. Thompson: Yes.

By Mr. Thompson:

Q. Getting back to Defendants' Exhibit No. 16, for identification, is that a report of the proceedings of one of the meetings of the Lines?

A. It is the proceedings of April 16, the April
1321 16, 1954 meeting.

Q. Who was present representing the Markin, I mean the Parmelee Transportation Company?

A. Mr. Markin, Mr. Scheeder, Mr. Rankin and Mr. Krock.

Q. Is that K-r-o-c-k? I think that is the first time he has been mentioned.

A. That is right.

1322 Q. Also on the other side of the table were the representatives of the terminal lines, is that correct?

A. They were in the meeting, yes, sir. There were also present at the meeting some station representatives.

Q. I direct your attention to a document marked as Defendants' Exhibit No. 17 for identification, which purports to be the proceedings of the meeting of April 26.

Does that refresh your recollection as to the time of the postponing meeting for resolution of this problem?

A. The April 26th meeting?

Q. Yes.

A. It was called for the purpose of trying to meet final conclusions with respect to the matter.

Q. Do you recall whether you did reach them or not?

By Mr. McConnell: I object to his reading from the document. If he recalls, he recalls, but he is looking at the document now.

By Mr. Thompson:

1323 Q. Do you recall without looking at the document?

A. Yes; the situation was resolved.

Q. Do you remember what agreement was finally reached?

A. As I recall it, it was on a basis of $1.12—$1.12½ retroactive to January 1, and it was $1.20 retroactive to April 1, 1954.

Q. Running through until when?

A. Well, I presume it was to run until we got another request for an increase.

Q. Well, do you recall whether there was a--

By Mr. McConnell: I object and move to strike that out as an assumption.

By the Court: The objection is sustained to the last part.

By Mr. Thompson:

Q. Do you recall, Mr. Padrick, whether there was a formula or an escalator clause provided for taking care of the situation after July 1, 1954?

A. There was.

Q. What was that, if you remember?

A. It was on the basis of one cent for every three-cent increase.

Q. Do you recall whether, by July 1, 1954, when
1324 the escalator clause was to have application, whether the Parmelee Transportation Company had reached an agreement with its employees so that you knew what the increase was at that time, or was it later?

A. I didn't get the date that you gave.

Q. The escalator clause was to apply, so you said, beginning July 1, 1954, a one-cent increase for each three-cent increase in the wage scale?

A. That is correct.

Q. Do you remember whether, by the time July 1, 1954 arrived, Parmelee Transportation Company had reached an agreement with its employees so you knew whether the formula applied or not?

A. It did apply.

Q. Do you remember when, or do you know when it was put into effect?

A. Well, it went to $1.22.

Q. I wish to call to your attention Defendants' Exhibit No. 18, which I will have marked for identification.

(Thereupon the said document was marked Defendants' Exhibit 18 for identification.)

That purports to be a letter from the Parmelee
1325 Transportation Company by Markin, the president, to Mr. E. B. Padrick under date of September 23, 1954. Do you remember receiving that letter?

A. I do.

1326 Q. You have no recollection, as I understand it, when the matter of the solution of the railroad problem, I mean the labor negotiations, concluded in 1954. Does that refresh your recollection?

A. It refreshes my recollection to the fact that it went to $1.22.

Q. When?

A. July 1, 1954.

Q. Do you mean retroactive to July 1, 1954, or when did the labor negotiations result in an agreement? Does that letter say?

By Mr. McConnell: Well, I think the letter speaks for itself, your Honor, and I object to his telling what the letter says. If he wants to offer it in evidence, I have no objection to it.

By the Court: He may refresh his recollection.

By Mr. Thompson:

Q. Does it refresh your recollection, or do you know when they finally got an agreement with their employees that year?

A. I don't recall the exact date.

Q. All right. Do you recall to what time Mr. 1327 Markin's agreement extended with his employees?

A. No, I do not.

Q. I call your attention to the letter to which I just made reference and ask you to look at it and see whether that refreshes your recollection as to the time Mr. Markin represented that his labor agreement extended.

A. July 1, 1954.

Q. That is when it became effective.

By Mr. McConnell: I don't care for your testimony. I object to it.

By the Court: Yes, sustained.

By Mr. Thompson: All right; the document will tell.

By Mr. McConnell: Certainly it will.

By Mr. Thompson: Since the witness can't read it.

By Mr. Thompson:

Q. When this request for $1.00 or an increase for $1.25 was presented to the Terminal Lines, did they take any

action with respect to this matter of requesting, of requested increases?

A. Yes, they did.

Q. What did they do? What is your recollection
1328 as to what the Lines did in addition to settling the current controversy?

A. Well, we went over point by point the representations made by the Parmelee company.

Q. I direct your attention again to Defendants' Exhibit No. 15, for identification, particularly page, that which is marked as page 2 thereof, and I ask you if that refreshes your recollection as to a resolution that was adopted at that meeting of January 29, 1954 with respect to this transfer service.

A. It does.

Q. Does that resolution that is recorded in the minutes there—was that resolution recorded in the minutes adopted as the minutes show?

A. It was.

Q. Was there more than one committee appointed at that meeting?

A. There were two committees appointed at that meeting.

Q. All right.

These minutes show what the two committees' duties were, is that correct?

A. They do specifically.

Q. Were these minutes prepared in the usual and regular course of business of the Terminal Lines' group?

A. They were.

1329 Q. Were these minutes promulgated to the members of the terminal lines?

A. They were.

Q. Was there a committee appointed pursuant to the resolution?

A. Yes.

Q. Well, it has been stated here a good many times, Mr. Padrick, what railroads are on that committee.

Did you meet with that subcommittee of six railroads that were appointed to look into this matter of transfer service?

A. I did.

Q. Do you remember who the regular persons were that met as the representatives of these six railroads, as spokesmen for them?

By Mr. McConnell: May we have the time, please, when we are talking about?

By Mr. Thompson: Well, this is the spring of nineteen—

By Mr. McConnell: The committee members change, as you know.

By Mr. Thompson:

Q. All right. The regular committee members at 1330 the outset.

A. Well, to start out with, the committee was appointed as railroads and those that usually represented this committee in these matters I can testify to, yes.

Q. All right. Who were they? What was the regular personnel of this committee so far as persons appearing was concerned?

A. They were augmented from time to time, and there were substitutions made from time to time, but generally this committee consisted of at that time Mr. Kimbel of the Illinois Central, Mr. Quackenbush of the North Western, Mr. Nelson of the B&O, Mr. Holt of the Pennsylvania, Mr. Sloan of the Santa Fe—have I named six?

Q. The New York Central.

A. And Mr. Bone of the New York Central.

Q. Was there a chairman of this committee of railroads?

A. Yes.

Q. Who was that?

A. Mr. Bone of the New York Central.

Q. Now what, if you recall, was the first action taken by this subcommittee of six railroads?

1331 A. Well, the first action that I can recall having been taken by this committee was to formulate a list of those that might be interested or might be induced to be interested in giving consideration to handling the transfer service.

Q. Do you recall after they formulated the list—did they formulate a list?

A. They did.

Q. What was done after that, then?

A. Well, they divided the list between several on the committee, and asked that those to whom they had been appointed, the several organizations, that they contact those organizations to determine whether they would be interested in performing the service.

Q. Were you requested to take part of that chore of contacting prospective bidders?

A. I was.

Q. Do you recall who was assigned to you?

A. Yes. As I recall it now, I was given the assignment of the Chicago Gray Line, the Hertz Driv-Ur-Self—

Q. Hertz Driv-Ur-Self?

A. Hertz Driv-Ur-Self, and Parmelee Transportation Company, and later the New York Gray Line.

1332 Q. I don't suppose you recall who was assigned to the other members of the committee, or do you?

A. No, I don't.

Q. Now, after these initial contacts were made, was there a meeting between the committee as a whole and the persons who had indicated some interest?

A. Yes.

Q. Do you recall when and where this first meeting was held, the first two days of meeting?

A. I don't recall the exact dates. I do recall this, that I wasn't present the first day. I was there the second day.

Q. I think it is September 15 and 16 of 1955. Does that refresh your recollection?

A. I believe those were the dates.

By Mr. Freeman: 1954.

By Mr. Thompson: All right. There is no dispute about it.

By Mr. Freeman: There is a dispute. I mean, I think it was an inadvertence. You said 1955, and you meant 1954.

By Mr. Thompson: All right. Thank you for the correction.

1333 By Mr. Thompson:

Q. September 15 and 16, 1954?

A. I believe those were the dates.

Q. And meetings were held where, if you recall?

A. I think that the meetings were held at the Union League Club.

Q. Now you say you were not there the first day, the 15th?

A. No, I was out of the city.

Q. Do you recall who appeared before the committee on September 16 to discuss this matter?

A. Well, I remember Landman appearing before the committee. I remember an Ayers appearing before the committee. And I believe that Mr. Keeshin appeared before the meeting.

Q. How long were these interviews with each of the companies that appeared?

A. Primarily the meeting was for acquainting those that indicated the desire in the business to make some

further presentations, to acquaint them with what would be expected of them with respect to the transfer.

Q. Had there been a memorandum or outline of the service in general prepared for distribution prior to this September meeting?

1334 A. Yes, there had.

Q. And had that been distributed?

A. It had.

Q. These were just oral discussions at this September meeting?

A. To answer any questions that might arise in the minds of those that had indicated that they wanted to submit something further.

Q. Now, do you remember what request was made with respect to the time when the committee would like to have submissions from those who were interested in making a final bid?

A. Yes, there was some indications to the effect that they would like to have the bids in by the first of the year.

Q. When November came around, were there any bids in that you have any recollection of?

A. No.

Q. Did the committee take any action to stimulate some bids in November, 1954?

A. Yes, the committee was directed to take further action in connection with the matter and endeavor to determine whether or not any of the principals were interested to the extent that they would submit in

1335 writing their proposal.

Q. Did any of these invitees ask the committee for further interview before preparing their formal bid?

A. I believe that Mr. Markin indicated that he would like to have an interview with the committee.

Q. Do you recall whether Mr. Keeshin did or not?

A. Yes, I think he did.

Q. Do you recall whether there was a further interview between the committee and Mr. Keeshin first?

A. Yes, there was.

Q. Do you recall whether there was a further interview between the committee and Mr. Markin?

A. I dn't believe that he had submitted anything in writing up to that time.

Q. Now when did Mr. Keeshin submit his first proposal in writing, if you recollect?

A. I don't recall the exact date, but I believe it was in December.

By Mr. Meserow: What year?

By the Witness: Well, it was prior to January, the final date we had requested. That must have been 1954.

By Mr. Thompson: I will ask that this document 1336 be marked Defendants' Exhibit 19 for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 19 for identification.)

By Mr. Thompson:

Q. I call your attention to what has been marked Defendants' Exhibit 19 for identification. That appears to be what, Mr. Padrick?

A. This is a letter from Mr. Keeshin to Mr. Sidney Bone, who was acting as chairman of the sub-committee, and is dated December 15, 1954.

Q. Is there attached to that what appears to be, at least, the formal proposal of Mr. Keeshin for doing this transfer service?

A. Yes, there is.

Q. To your recollection was that the first written proposal that the committee had received?

A. It was.

Q. At this interview between Mr. Keeshin and the committee prior to his submitting this written proposal, what did Mr. Keeshin say to the committee as to the survey he had made, if any?

A. Well, he indicated that he had had a group of his men, as he put it, survey the several stations
1337 to determine the type of service that would be involved.

Q. Now do you recall that later in December, 1954, whether there was an oral interview between Mr. Markin and perhaps other Parmelee representatives and members of the committee?

A. The following December?

Q. Yes, around Christmas, 1954.

A. Yes, there were some conversations back and forth.

Q. Do you remember what was said to Mr. Markin about getting a bid in, if he was interested?

A. Well, I personally urged him to get his bid in.

By Mr. Thompson: I will ask to have this document marked Defendants' Exhibit 20 for identification.

(Thereupon said document was marked Defendants' Exhibit No. 20 for identification.)

By Mr. Thompson:

Q. I direct your attention to a document which has been marked Defendants' Exhibit 20 for identification, which together purports to be a letter from Mr. Bone to Mr. Keeshin of January 11, 1955, and a reply by Mr. Keeshin on January 15, and Mr. Bone's transmittal of the
1338 correspondence to you under date of January 19.

Now, did you receive that communication from Mr. Bone?

A. I did.

1339 Q. And up to this time, January 19, 1955, had there been any written proposal made by any of these invitees to do this interstation transfer service?

A. I don't think so. There is one that I am in doubt about. There was a very short letter written to Mr. Bone, a copy of which was forwarded to me, by Willett Transportation Company, and I don't recall the exact date of that letter, but I don't think—I am sure that it wasn't before this.

By Mr. Freeman: Could you give me the code reference of those documents, Mr. Thompson?

By Mr. Thompson:

Q. Did you have any knowledge of any change in the labor situation in Chicago with respect to whether or not there was some period agreement with the Teamsters, so-called, and the employing transportation and trucking services at about this time?

A. The knowledge that I have with respect to that is what was transmitted to me at that particular time, and I understood that there was a three-year agreement that had been accomplished.

Q. Did Mr. Keeshin make any change in his bid 1340 by virtue of these other changes?

A. He made a positive three-year coupon rate.

Q. As of January 15, 1955?

A. Yes, that is right.

Q. Now had the Parmelee Transportation Company up to that time filed any proposal, written proposal, as to what it would do after June 30, 1955?

A. We had not received anything in writing from the Parmelee Transportation Company at that time.

Q. Do you remember when you did finally get something from them?

A. I believe it was in March.

By Mr. Thompson: I will ask to have this document marked Defendants' Exhibit 21 for identification.

(Thereupon the said document was marked Defendants' Exhibit 21 for identification.)

By Mr. Thompson:

Q. I hand you a document marked Defendants' Exhibit 21 for identification, consisting of four pages.

A. It is a letter from Morris Markin to me dated March 15, 1955.

Q. And is that the first proposal you had received
1341 in writing from the Parmelee Transportation Company with respect to an agreement under which it would render the service after June 30, 1955?

A. It is.

By Mr. McConnell: I object to the characterization of this. It speaks for itself, whatever it is.

By the Court: Overruled.

By Mr. Thompson:

Q. Now what happened next, after March 15 when you got this document?

A. Well, there was some indication that Mr. Markin desired to have a meeting with the committee. First representations were made to me, and then I referred them to Mr. Bone, who was chairman of the committee. It was decided that there would be a meeting, at which each of the representatives that had established a written bid would be called and be questioned concerning their bid.

1342 Q. And was there a personal meeting with the Parmelee representatives and the committee of six railroads?

A. I do not recall of one separately from the meeting that was called at which others were also invited at a period of the day.

Q. I am talking about following this March 15 meeting. Was there a meeting with Markin to discuss his bid on the 17th, say, within the next couple of days?

A. I believe there was.

Q. Do you recall that discussion that took place between the sub-committee of the Lines and the committee of the Markin people, I mean the Parmelee people?

A. Well, I can't recall too much of it now.

Q. Do you recall any discussion of a provision of the Parmelee proposal that had to do with volume of passenger traffic?

A. I most certainly do. In connection with that a discussion took place with respect to the so-called second escalator clause. That was the term that was used by the sub-committee, and that was the clause that indicated that there would be a one per cent—

Q. A one cent, you mean?

A. A one-cent increase for every one per cent decrease in the volume of travel, and Mr. Markin was
1343 told that the railroads were never consent to any such escalator clause.

Q. Was there any such clause in the Keeshin bid?

A. No, sir.

Q. Do you recall anything else that was discussed at this March 17 meeting with Markin and his representatives or his associates, I mean?

A. A question of equipment was discussed, and there was an indication on the part of Mr. Markin that he expected over a period of time to spend $500,000 in equipment replacement.

Q. Was there anything said about the period of agreement he wanted in the event he was to supply some new equipment?

A. Yes. As I recall it at that time it was six and a half years.

Q. Was there anything said by Markin as to what he wanted this period of time for?

A. Yes, to amortize the cost of his equipment.

Q. Prior to 1955, which is the period we are now talk-

ing about, was there more than one contractor at a time which the railroads contracted with to do this transfer service?

A. No, sir.

1344 Q. During the period that you were here in Chicago what company was the sole contractor for this local transfer service?

A. The Parmelee company.

Q. Is the Parmelee Transportation Company the plaintiff in this case?

A. They are.

Q. Was there anyone else performing this transfer service in Chicago during all this period that you were familiar with it, other than the Parmelee Transportation Company?

A. They were the only operators performing that service.

Q. What was the period of time, if you remember, that Mr. Keeshin proposed was desirable for a contract to equip for and render this service?

A. Five years.

Q. And the Parmelee was even for a longer period?

A. Yes, sir.

Q. I direct your attention to a document which I am having marked as Defendants' Exhibit No. 22, for identification.

(Thereupon said document was marked Defendants' Exhibit No. 22 for identification.)

1345 By Mr. Thompson:

Q. (Continuing) I call your attention to a letter which purports to be a letter, rather, dated April 6, 1955 from Mr. Keeshin to Mr. Bone, and I inquire whether or not that was brought to your attention at or about the time of its date.

A. It was.

1346 Q. Was that a supplement to the original proposals of Mr. Keeshin?

A. I would consider it as such.

Q. At this March 17 meeting between Mr. Markin and his associates on the one hand the railroad committee on the other, was anything said by Mr. Markin as to the price to which the coupon charge might go if this volume of passenger traffic continued to decline?

A. Yes, there was.

Q. Was that said in connection with the discussion of this so-called second escalator clause?

A. It was.

Q. What did he say?

A. Well, it might reach $1.50.

Q. What about the present volume of passenger traffic that transfers between stations in Chicago at this time? At the present time is what I am talking about.

A. At the present time?

Q. Yes.

A. We indicated in a letter that went out to those we thought might submit bids that there would probably be on the basis of a million and a half a year. It

1347 is running now less than a million a year.

By the Court: One million two?

By the Witness: Less than a million a year, closer to nine hundred thousand.

By the Court: Thank you. I didn't hear it.

By Mr. Thompson:

Q. In other words, there has been a decline year after year in the volume of passenger traffic, is that it?

A. Generally, yes. With respect to passenger traffic, that is so, that is right, and in connection with the transfer of passengers between stations in Chicago, that follows.

Q. After this March 17 meeting with Mr. Markin and his associates where this bid of March 15 was discussed, and after the April 6th letter from Mr. Keeshin respecting his proposal, what next occurred in which these two bidders were involved?

A. There were a meeting in May, and I believe it was May 19.

Q. Where was that meeting or those meetings held?

A. At the Union League Club.

1348 Q. Tell us about the May 19 events.

A. Well, the May 19 event or meetings we anticipated that there might be three representatives showing up and time was prepared for the three in the morning, and I believe it was ten o'clock in the morning. It could have been 10:30, but anyhow in the morning I mean Mr. Keeshin was to appear, and in the afternoon Mr. Markin was to appear, and then later in the afternoon time had seen set aside for Mr. Willett if he intended to appear.

Q. Was this May 19 meeting one arranged by agreement among the railroad representatives and also among the representatives of the bidding contractors?

A. Mr. Bone arranged for the meeting. He was the chairman of the committee.

Q. All right. At the May 19 meeting in the morning at the Union League Club, you say that is when the Keeshin group appeared before the committee?

A. Yes.

1349 Q. Do you recall who was there as the spokesman for the Keeshin interests?

A. Well, I remember that Mr. Keeshin was there, and Mr. Baxter was there.

Q. Who was Mr. Baxter, if you know?

A. Mr. Baxter is Mr. Keeshin's assistant or representative of the Railroad Transfer Company.

Q. Did you know Mr. Baxter prior to the time that he became associated with the Keeshin interests?

A. I did not.

Q. All right.

Who was at the meeting, if you recall, in the morning, representing the Chicago Terminal Lines? Indicate who was there for the New York Central, if you recall.

A. Mr. Bone.

Q. And who for the Baltimore and Ohio?

A. Mr. Whittington, and there may have been others. I don't recall, but Mr. Whittington was the top man.

Q. Do you recall whether Mr. Nelson was there, who had been working on the committee?

A. I believe he was. I know the top spokesman was Mr. Whittington at that meeting.

Q. Who was there for the Pennsylvania?

1350 A. Mr. Comer and Mr. Holt.

Q. Mr. Holt was the regular man on the committee. Who was Mr. Comer, if you know?

A. Mr. Comer is the general passenger traffic manager of the Pennsylvania from Philadelphia.

Q. Who was there on behalf of the Santa Fe, if you recall?

A. I know that Mr. Sloan was there. I can't recall whether there were others there besides Mr. Sloan or not. There may have been.

Q. What about the North Western?

A. Mr. Brennan was there.

Q. Did he also bring along with him Mr. Quackenbush who had been the regular representative?

A. I don't recall that Mr. Quackenbush was there.

Q. Or Mr. Stewart?

A. I don't recall that he was there either.

Q. I think I covered the field except the Illinois Central, I guess. Who was there from the Illinois Central?

A. I am not sure who was there for the Illinois Central at that meeting.

Q. Was Mr. Hearne there? Does that refresh your recollection?

1351 A. I believe he was. I believe Mr. Hearne was at that meeting.

Q. And Mr. Smart?

A. I don't recall whether Mr. Smart was at that meeting or not.

Q. This is May 19, 1955?

A. That is correct.

Q. Now, tell us what occurred in the forenoon of May 19, 1955 when you were having the Keeshin hearing.

A. Well, we belabored Mr. Keeshin with a lot of questions about the application of his proposal.

Q. Did Mr. Keeshin first present his case?

A. That is correct.

Q. And then you questioned him?

A. Yes. He indicated what he proposed to do in the way of handling the service, the type of vehicles that he intended to use.

Q. Tell us what he said.

A. Well, he said he was going to obtain a sufficient number of station wagons, and if necessary, other types of equipment to perform the service between the stations.

Q. For passenger service?

1352 A. Passenger service between the stations. He indicated also that he intended to handle the transferred baggage by trailers, parked trailers, to the extent that the trailers could be parked at the various stations, and that also he indicated that he intended to establish a separate center at the LaSalle Street Station, and that he would keep the tractors moving between the stations during the period of time, the eight-hour period of the transfer service or longer if necessary, to take care of the transfer of checked baggage between trains, with the tractor service to pick up the trailers.

Q. Did he indicate how frequently he contemplated moving the baggage from one station to another?

A. The checked baggage, a minimum of four trips a day.

Q. What else did he say about his equipment?

A. Well, he indicated that he would replace that equipment, the passenger carrying equipment within a maximum period of thirty months, and that his equipment for the handling of the checked baggage would be replaced as necessary.

He also indicated that the equipment would be air conditioned equipment for the handling of the pas-
1353 sengers and would be radio-dispatched equipment and that likewise his tractors for the transfer of checked baggage between stations would be radio-dispatched.

1354 Q. Was anything said to him about furnishing profit and loss statements?

A. That came in the questioning period later on, and he was questioned as to whether he would be agreeable to furnishing a profit and loss statement, and he did agree to furnishing a profit and loss statement and indicated that it would be prepared by an outside auditing firm.

Q. Can you think of anything else that was brought out in the inquiry?

A. Oh, yes. There was one other thing that was questioned in connection with it, and this was most particular, the question of whether he anticipated any interruption of service because of labor disputes, and he indicated that he anticipated none. In fact he endeavored to show some papers that he had there that dealt with the fact that he had assurances of a three-month—three years stabilized service.

Q. Did he say what assurances he had with respect to

the fourth and fifth years of his proposed contract with labor officers?

A. Well, he provided for an escalator clause for his fifth and sixth years on the basis of one cent for every five cents' increase in salary for the fifth and sixth
1355 years.

Q. Did he say anything about conversations he had with Mr. Fenner about negotiations he had for a longer period?

A. Yes, he indicated that he was in negotiations with Mr. Fenner at that particular time for a longer period of time, and that he hoped to be able to come up with as long as a six years' contract.

By the Court: Shall we quit now? We have some jurors who live out in the suburbs and I want them to beat the traffic. That was a message I got through channels. Is that right?

All right, so come back tomorrow morning at 10:00 o'clock. Again I ask you to please not discuss this case with anyone, and have a nice evening.

1356 (Whereupon out of the presence and hearing of the jury the following proceedings were had:)

By the Court: I have very little tomorrow morning. Suppose the lawyers come in tomorrow morning at 10:15.

By Mr. Thompson: Do you want to stay a few minutes to offer these documents?

By the Court: You mean in the absence of the jury? I will discuss it with you.

By Mr. McConnell: I don't care. Put them in evidence as far as I am concerned. You have them marked.

By the Court: Let's wait until the jurors leave. I have lots of time.

By Mr. Thompson: I don't know, I was just trying to save time.

By Mr. McConnell: Well, I said in the course of the proceedings that if he wanted to offer the documents, I have no objection to them, so he can just mark them admitted if he wants to.

By Mr. Thompson: Tomorrow morning will take care of it.

1357 By the Court: Judge, I want to say one thing, I see no objection to their being offered in the presence of the jury, if there is no objection.

By Mr. Thompson: If there is not going to be any objection, we will do it in the morning, and there can't be any argument.

By Mr. McConnell: All you have to do is strike out the identification, and it is in.

By the Court: You will offer it in the morning. I thought there would be objections, and then I would hear you.

Very well; 10:15 tomorrow.

(Whereupon an adjournment was taken to 10:15 o'clock, a.m., of the following day, Wednesday, May 4, 1960).

1358 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Wednesday, May 4, 1960,
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman
Mr. John Borst, Jr.
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Andrew J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

1359 Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1360 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company *v.* John L. Keeshin, et al. Case on trial.

(And thereupon the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

By Mr. McConnell: Mark these as Plaintiff's Exhibits 103, 104, 105 and 106, for identification.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 103, 104, 105 and 106 for identification.)

By Mr. McConnell: If the Court please, I want to make a statement here outside the presence of the jury, and I don't want the Court to think that I am critical of the press or of the Court in making this statement.

I have had marked for identification, as Plaintiff's Exhibits 103, 104, 105 and 106, articles which appeared in the newspapers.

The one exhibit, Plaintiff's Exhibit 103, was
1361 under date of Tuesday, May 3rd in the Chicago Daily News. No. 104 was in the Chicago American under date of May 3rd.

The one in the Tribune was May 4, and that is marked for identification as Plaintiff's Exhibit No. 105, and the one marked for identification as Plaintiff's Exhibit No. 106 was in the Chicago Sun Times of May 4.

The tenor of these articles is that what is before the jury is moot; that is, that your Honor is going to take it away from the jury in any event.

Of course, if the jurors saw that it is highly prejudicial to any consideration of the issue on its merits, because they know what they are doing, as far as they are concerned, is a useless act.

I have no quarrel with your Honor saying that, and I have no quarrel with the press reporting it.

By the Court: I can see your point of view, and I accept it in good faith. I can understand your point of view except for one thing; that whatever appeared in those articles was on a question of law, which never goes before the jury in any event, not a question of fact.
1362 Secondly, it has not disturbed their proceedings, and the articles have all said they are to proceed with their issue undisturbed.

By Mr. McConnell: What I am asking is this, if I may—

By the Court: The offer is well received. They may be received in evidence and accepted and overruled.

(Said documents, so offered and received in evidence, were marked, respectively, as Plaintiff's Exhibits 103, 104, 105 and 106.)

1363 By Mr. McConnell. All I want your Honor to do is to tell the jury not to pay any attention to them.

By the Court: I am going to tell the jury definitely. Is there anything else?

By Mr. McConnell: I have nothing further.

By the Court: All right; bring in the jury.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. I want to say just one word for the record. I have told it to you once before, I think, or twice before.

If you have seen any articles in the papers about this case, I ask you to please disregard them. I don't know whether you have or haven't, and I am not going to ask you that question.

What is being said or done outside the presence of the jury or what appears in the newspapers is entirely foreign to the issue before you. I have told you at the outset that you are to judge the questions of fact. I am to determine the questions of law, so we are partners in this venture, and the same goes and the same will continue throughout the proceeding.

1364 Please, I ask of you sincerely to disregard anything you have heard outside, whether it is on the radio or on television or in the newspapers. You have one simple single question isolated. I have defined it to you. I will define it again in my instructions, and I want your honest, impartial and fair judgment.

Thank you very much.

By Mr. Thompson: Mark these as Defendants' Exhibits 23, 24, 25, 26, and 27, for identification.

(Thereupon the said documents were marked Defendants' Exhibits 23 through 27, inclusive, for identification.)

1365 EARL B. PADRICK, called as a witness herein on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Thompson.

Q. Mr. Padrick, we had at the adjournment last evening, I think, finished with the report of the proceedings connected with the appearance of Mr. Keeshin before the committee on May 19, 1955, at the Union League Club in the forenoon.

Now will you please tell us the occurrence of the afternoon when Mr. Markin and other spokesmen for the Parmelee Transportation Company appeared?

A. Mr. Markin appeared with several of his associates before the meeting and presented exactly the same proposition that was included in his paper of March 15.

There was a considerable amount of questioning in connection with it. He was asked about the renewal of equipment, and he indicated that he felt that the period over which the renewal of equipment should be made was something that should be determined by the operator.

1366 It was their prerogative to determine when equipment needed to be replaced.

He was asked when he intended to renew the equipment that was now in operation, that was in operation at that time, and he indicated that he had said and would put into a contract that he would spend $500,000 in the renewal of the equipment over the period of the contract, that he expected to spend that much, but again, he said that the question of when equipment was to be renewed was something for the operator to decide, or when that equipment was necessary to be retired.

He was asked about air conditioning of his equipment, as the new equipment came into being, and he felt that

there was no practical need for air conditioning the equipment.

He was asked about radio dispatching, and he indicated that he felt that his telephone dispatching was sufficient to take care of the situation.

He was asked about the transfer of baggage and how it would be handled, and he indicated that he felt that the most practical way of handling it was in the smaller individual trucks rather than trailers and tractors.

The question was asked him as to any labor
1367 agreement that he might have, and he indicated that he had none at that particular time, that is, for the coming years of the contract.

He was asked whether or not he would continue the so-called second escalator clause, that is, the escalator clause in connection with the decrease in number of coupons honored.

After considerable argument, and I think that I probably had more to do with that end of the argument than anyone else — I told him at that time, I said "This is the last go-around, and as a business venture, can't you take your business and handle it in the same manner that the railroads have to handle theirs; if the business goes down and certain trains have to come off, they have to come off, and can't you reduce your overhead to the same extent, and will you give any further consideration to that particular clause?"

1368 They asked for a recess and they left the room.

When they came back, why, he said that I was a pretty hard bargainer, but that he would allow the escalator clause, the second escalator clause on the decrease in business, to be excluded from the contract.

He was asked then about the escalator clause in connection with the one cent for every three cents increase in labor costs.

He indicated that that would have to stay as it was at that time, and he was willing to fix a price of $1.20 the first year.

I think that is about all that I remember.

Q. Was anything said about his justifying the application of the escalator clause or any other economic matter by furnishing profit and loss statements?

A. Oh, he was asked if he would furnish a profit and loss statement, and he indicated that he would not.

Q. Did he give any explanation of why he wouldn't furnish financial reports?

A. Yes, he did. He said that in connection with an endeavor to break down the profit and loss with
1369 respect to simply that portion of the Parmelee operation was an impossible task as there were several of his companies involved in connection with it, and they were interlocking in such a way that he could not get a profit and loss statement on the Parmelee operation alone.

Q. That is, you mean the local interstation transfer operation alone?

A. That is right, the interstation transfer portion alone.

Q. Was the then existing baggage transfer by the Parmelee Transportation Company by these straight-body trucks, small straight-body trucks?

A. They were. That was their operation.

Q. And he did not propose to change that?

A. No, he felt that that was a better operation.

Q. How many times a day was the Parmelee Company then making baggage transfers?

A. The minimum was two a day.

Q. And what did he say about that, as to what he was going to do in the future, if anything?

A. Well, I don't recall specifically that the question was asked as to what he intended to do in the future with regard to that.

Q. Is that that you have recited all that you
1370 remember about the May 19 meeting at the moment?

A. Well, as I recall, we waited a while after Mr. Markin left to determine whether or not there would be an appearance by Mr. Willett. Mr. Holt had indicated prior to that time that he doubted very much that Mr. Willett would appear, and he did not appear.

Q. All right. Then what did the committee do after the day's work was done?

A. Well, they made a roundup of the thinking of the people there at the meeting, and as I recall, it was felt at that time that the offer of Keeshin should be accepted, but they did not take a vote on the matter but desired, apparently, to confer with their superiors as to what had taken place at that particular meeting, and suggested another meeting of the committee later. I believe that date, as I recall it now, though I could be mistaken, was June 3rd.

1371 Q. After this May 19 meeting, did you hear further from Mr. Markin with respect to his bid or the bid of the plaintiff?

A. No, I did not, but I did receive a telephone call from Mr. Sidney Bone that indicated that there had been a change in the proposal of Mr. Markin, and he gave me the facts concerning it.

Q. I show you a document marked as Defendants' Exhibit No. 23, for identification, and inquire if that communication from Mr. Bone came to your attention.

A. Yes; I received a copy of this. I received it on May 23rd. It has our office stamp on it.

Q. Is that the confirmation of the telephone call to which you have just referred?

A. Yes, sir, it is.

Q. What next was done by the committee?

A. Well, the next thing that the committee did was to have a meeting on June 3rd. However, in connection with this conversation that I had with Mr. Bone concerning this letter, he asked whether I thought that communication should be delivered to the committee, and I said, "By all means it should be."

Q. Had Mr. Bone had some doubt about whether he ought to send it out?

1372 A. It seemed to me that he did because of the fact that we had indicated that the last round-up was the May 19 meeting, and he felt that anything received after that time probably should not be considered, but I felt that as long as the letter had been written and the telephone conversation was had, that certainly it should be repeated to the committee for what it was worth.

Q. Now then, on June 3rd where did the committee meet, if you recall?

A. In my office. Not in my office, but in the offices, the meeting room offices on the third floor of the Union Station.

Q. Were the same persons present as far as the railroad committee was concerned at the June 3rd meeting as were present at the May 19 meeting, or do you recall?

A. I don't recall positively that every one were the same persons. I believe there were others there, because the room was pretty well filled.

Q. Well, what occurred at the June 3rd meeting?

A. Well, at the June 3rd meeting Mr. Bone presented his—presented the committee's report, quite a lengthy report in connection with what the committee had done,

1373 and he asked me to elaborate on that to the extent that I thought it was necessary.

Q. Aren't you thinking of the June 13 meeting now of the Terminal Lines about this report?

A. No; I am thinking about the June 3rd meeting at which—I beg your pardon. I am thinking of the June 13 meeting.

Q. All right.

Now, tell us about the June 3rd meeting, separating the two.

A. The June 3rd meeting was a committee meeting presided over by Mr. Bone, and the arrangements again were discussed somewhat, and it was decided by the committee, by vote taken, and, as I recall, only one vote was taken, that the committee would report unanimously in favor of the Keeshin proposition.

1374 Q. Were there questions still in the minds of the committee when they met on the morning of June 3rd that they wanted to have resolved with Mr. Keeshin's appearance?

A. There was one particular question that I recall, yes.

Q. What happened when the committee, when that question was raised?

A. I was directed to get ahold of Mr. Keeshin and ask him to appear before the committee to resolve that question, and to the best of my knowledge that question to me was whether or not in the event of the notification—whether or not in the event there was a notification to Parmelee that their contract would be—well, they didn't have a contract, and I can't say contract—but that their services would no longer be required after the last day of September, and that Parmelee might or their employees might cause a work stoppage—and would he immediately be able to step into the breach.

He said that he would, even if he had to go out and rent the vehicles from Drive Yourself organizations.

Q. Was there anything else? Did he announce at that

time anything of whether he had placed an order?

1375 A. Yes, he did. He indicated that he had already ordered his station wagon and tractor-trailer equipment. There was some surprise about that. The question was raised, "Well, what if you don't get this contract?"

He said if he didn't get the contract he would probably be in the automobile business for a few weeks selling station wagons.

Q. Can you think of anything else that occurred at the June 3rd meeting, other than the vote?

A. No.

Q. I direct your attention to the Defendants' Exhibit No. 24, for identification, and inquire if you have seen that document before?

A. Yes, I have seen this. This is directed to me dated June 3rd by the committee.

Q. What was done with it eventually?

A. A call for meeting was arranged, and that letter accompanied the call for meeting of the Chicago Terminal Lines.

Q. Is that the meeting to which you were referring a few moments ago?

A. It is.

Q. The June 13 meeting?

1376 A. Yes.

Q. Were all the lines represented at that meeting as far as you know?

A. As far as I know all of the lines were represented.

Q. All right. Tell us about the June 13 meeting as far as it had to do with this interstation transfer affair.

A. Well, the meeting was opened, and I asked Mr. Bone to make a report of the committee, which he did, and he asked me then, if there was anything else that I recalled, if I would comment on it, and I didn't recall

that there was anything else I could add other than the committee's report, and there was some discussion back and forth with respect to the matter, after which they called for a vote, and I took a vote, and the vote was unanimously in favor of the subcommittee's report, or in favor of the Keeshin contract, after which I was directed to act as the agent of those carriers and notify Mr. Keeshin that they had accepted his proposal and that also I was directed as their agent to notify Parmelee that their service would no longer be required after the end of September.

1377 Q. I direct your attention to Defendants' Exhibit No. 25, for identification, and inquire whether that is a report of the proceedings of the June 13 meeting of the Lines' representatives?

A. It is.

Q. And I direct your attention to Defendants' Exhibit No. 26, for identification, and inquire whether that is the notice you directed to the Parmelee Transportation people as to the action of the Lines?

By the Court: What was that date, please?

By Mr. Thompson: June 13.

By the Court: Thank you.

By Mr. Thompson:

Q. And what was done with that document after you prepared it?

A. After this document was prepared and signed, I personally delivered this document to Mr. Markin.

Q. On June 13, on the date it bears?

A. I did, on the same date.

Q. I show you Defendants' Exhibit No. 27, for identification, and ask you if that is the notice you delivered to Mr. Keeshin.

A. It is.

Q. And after that was prepared what happened?

1378 A. I sent this letter by messenger to Mr. Keeshin.

Q. On June 13, 1955.

A. On June 13, 1955.

Q. Now, Mr. Padrick, were the negotiations and the final action of the terminal lines in making this 1955 arrangement any different than they had been through the years that you had been connected with the interstation transfer business?

By Mr. McConnell: I object to that; calls for a conclusion of the witness.

By the Court: Objection sustained.

By Mr. Thompson:

Q. Prior to this year 1955, how were the arrangements which were worked out with the Parmelee Transportation Company put into effect or confirmed?

A. In some instances through committee action that was finally terminated at a meeting of the Chicago Terminal Lines, and their vote taken and determination as to what would be done with the proposal. Recommendation was made by someone, and that recommendation was then voted upon and adopted, or in some instances adopted by majority with withheld expressions later to be recorded, usually given five days to record such withheld expressions. Generally it was the same procedure.

1379 By Mr. McConnell: I move to strike that out.

By the Court: The last part may be stricken, "generally the same procedure."

By Mr. Thompson:

Q. Did the terminal lines after it had acted give you directions as to what to do then in these earlier years?

A. Yes. In each instance I was directed to notify Parmelee Transportation Company of the action that had been taken.

Q. Now following the delivery of these notices on June 13—well, following the action of the terminal lines on June 13, were you given directions with respect to formalizing the contract for the new service?

A. I was.

Q. What occurred with respect to formalizing this contract?

A. I was asked to establish a legal committee and arrange for a legal committee to meet with Mr. Keeshin's legal representatives to formulate such a contract.

Q. Were there a number of meetings and revisions made?

1380 A. Yes.

Q. When did you finally agree on the formal contract, approximately?

A. It was in the middle of September.

Q. 1955?

A. 1955.

Q. And then what, with respect to the signing of the agreement?

A. Well, because of some doubt by some of the lawyers as to the way in which authorities had to be given for the signing of such a contract, I was directed to prepare a letter to each of the Chicago Terminal Lines, in which we notified them that it was necessary, if I signed the contract as agent for the terminal lines, that I be given that authority in whatever manner it was necessary for each of the carriers to obtain that authority and furnish it to me.

I did receive from each and every one of the carriers authorization to sign the contract in their behalf as their agent.

Q. Do you remember as of what date the contract was executed between the parties?

A. Yes, it was on September 19, 1955.

1381 Q. Did the contract go into operation or the parties go into operation under the contract on October 1st as contemplated?

A. They did.

1382 Q. Was there any difficulty in making the change-over from Parmelee service to the Keeshin service that you observed on or about October 1st?

A. There were some slight interruptions that I was later advised was caused by some difficulties in connection, apparently, with the employees of the Parmelee Transportation Company.

Q. Well, did the Parmelee Transportation Company abandon the field and leave it to the new transfer service?

A. No, they did not.

Q. How long did the Parmelee Transportation Company continue to undertake to render this service after October 1st?

A. I am not sure of the exact time, but I know that it was more than six months.

Q. During all of this period, the new transfer service was performing under its contract, was it?

A. That is right. Some provisions had to be made at the stations where Parmelee vehicles were parked to provide another space for the acceptance of passengers at those stations.

Q. By the new firm?

A. By the new service, that is right.

1383 Q. What change was made so far as you are aware and can tell us with respect to the handling of baggage after the new service went into effect, checked baggage we are talking about?

A. Well, the provisions called for the railroads to handle the baggage to the tail gate of trucks or trailers, unsorted as between stations.

It was our understanding, not only understanding but contractual, that from that point on, the transfer would be handled the same as in the past by either sorting at

the tail gate or at some other central location, and then delivery made from that point, but the loading onto the trucks or the loading onto the tractors would be a duty of the railroad transfer company.

There was a request made by Mr. Keeshin during the period of the negotiation of the contract in which he felt that there might be a better operation or a faster operation made if the railroad employees were to load the tractors—

Q. The trailers.

A. The trailers or the trucks. It was stated that an alternate proposition was not acceptable, but that if he could negotiate with the railroad for them to pro-
1384 vide this service, there would be no objection as long as there was no interruption in the service.

Following that time, I understand that at two of the stations, he did make arrangements for the railroad employees to load the trailers with the checked baggage, for which he provided a payment to the carriers or to the station.

Q. In other words, it was a matter of private arrangement outside the general contract, is that it?

A. That is correct.

Q. How many times a day was Parmelee transferring checked baggage across the Loop before October 1, 1955?

A. Two a day.

Q. How many times has Keeshin been transferring it?

A. A minimum of four a day.

Q. During the period that the new contractor has been furnishing the service, the Keeshin group, has there been any disruption or even threatened disruption of the service by reason of labor difficulties?

A. No, sir.

Q. Has the subject ever arisen during all this four and a half years?

A. Only with respect to what might happen in
1385 the sixth year.

Q. That is, you mean after this contract?

A. After this contract is up.

Q. Has the Keeshin group ever sought any increase in the coupon rate during the period it has been carrying on the service?

A. No, sir.

1386 Q. Did you, after you made this contract with the Railroad Transfer Service, Inc., or the Keeshin Company, did you do anything with respect to the Interstate Commerce Commission?

A. Yes. I was requested to file the contract with the Interstate Commerce Commission and also with the Illinois Commission.

Q. And you sent the Interstate Commerce Commission a letter and copy to Washington, D. C.?

A. I did.

Q. And to the Illinois Commerce Commission at Springfield?

A. I did.

Q. Is this pickup and delivery service which is provided, that is going out to somebody's house and picking up the trunks and bringing them down and checking them, is that part of the contract between the railroads and the transfer company, or is that a matter of private contract?

A. It is a matter of private contract.

Q. With the customer?

A. That is right.

Q. Has there been any change in the scope or the extent of that service since the Railroad Transfer
1387 has taken over?

A. No, sir.

Q. Any enlarged area that is served?

A. You encompassed something in your question, and I believe that the word "scope" left me for a moment.

Q. All right.

A. The arrangement, as far as it being any part of the contract between the railroads and the operator is concerned, did not change. However, in the operation by Keeshin they did increase the area from which they would handle this checked—this baggage to and from the stations and from the homes have pickup and delivery service, if you want to call it that.

They increased the area outside of Chicago proper and increased that by some fifty additional communities around Chicago.

Q. There has been some reference in a lot of these papers that have been introduced in evidence or marked for identification respecting conversation back and forth about the employment of Volkswagens in this service. What happened with respect to that?

A. Well, the Volkswagens were allowed to be put in service as an experiment. As I recall the discussion at the time the equipment was viewed, it was the 1388 understanding that I got that the experimentation in different kinds of equipment should be carried on by the transfer company.

The Volkswagens were put in service in October. They were not air conditioned. There were some features in connection with this operation that didn't prove practical, although they were a larger carrying vehicle—they carried more passengers, and apparently were low in cost in operation.

They were discontinued and taken out of service. There were ten of them, and they were taken out of service by the first of the year.

Q. And there have been no Volkswagens used since then?

A. No, sir.

Q. You mean the first of 1956?

A. That is right.

Q. The station wagons that were first put in service, were they just standard station wagons with which we are all familiar?

A. Yes, they were.

1389 Q. Were there any changes made in the standard equipment?

A. With this exception. They were a type of station wagon that had the extra seat in the back, but the extra seat had been taken out to be used—the rear of the station wagon to be used as a baggage compartment, and yes, there had been along the period of time from October until the following spring, all of the station wagons were equipped with a partition between the baggage compartment and the passenger-carrying compartment.

Q. Was the baggage carried on the top of these station wagons, any of them, in actual operation?

A. In actual operation, I do not believe that the station wagon was equipped to carry baggage on top of it.

Q. What about other types of vehicles, did they have other types other than the station wagons, passenger-carrying, I mean?

A. They had a special type of body that would carry, I believe it was eleven passengers, and that contained a baggage compartment in the back, and also it contained a rack on top where additional baggage could be handled on top of that type of equipment with a tarpaulin

1390 that could be pulled over the baggage.

Q. Has the Keeshin group made revisions of its equipment from time to time as experience indicated the changes should be made for the service?

A. They have.

Q. Are there any other passenger-carrying equipment employed, other than these station wagons you have described and these coaches that you have described?

A. Yes, they put in a bus, a 20-passenger-carrying bus, because they found at certain times that the load factor was such that it would be to the best advantage in having some of those, of that type of equipment in their fleet.

That is particularly in the summertime and when there is a considerable amount of excursion traffic.

Q. Those large vehicles are used only for those group movements?

A. No, they are not. They are used for any movements, but when the volume of traffic is such that those vehicles can be used to best advantage.

Q. Prior to the take-over by the Chicago Transfer, what type of vehicles for passenger handling was the Parmelee people using?

1391 A. They had two types of vehicles. One was the regular taxi cab type of vehicle, the same vehicle that was on the streets for the handling of passengers in taxi cabs, manufactured on the same lines and by the same company that manufactured most of the cabs on the streets, with this exception, that there was provided in the cab a trunk that unlocked for the carrying of baggage in the rear compartment, and I do not believe that taxi cabs have that trunk. That same type of cab did not have the trunk for the availability of handling baggage.

By the Court: I think I will give the jurors a ten-minute recess.

By Mr. Thompson: I think I will be through in about a minute. I am about through with Mr. Padrick. I think I am through.

By the Court: I didn't know how long you would be.

1392 By Mr. Thompson: I think I will be through in a moment.

By the Court: All right.

By Mr. Thompson:

Q. I think you have described the passenger carrying vehicles of Parmelee?

A. Yes, with this exception, that they did have fourteen or sixteen, as I recall it, vehicles of a larger carrying capacity, and I believe again eleven passengers with a trunk compartment in the back of the vehicle that would take care of the baggage. The transfer of the checked baggage was handled in a small type of trunk. It was the type of trunk that could be used easily in city delivery with a rather short body, convenient, apparently convenient for fast service in tight places.

Q. They had no trailers or tractor types of movement?

A. No, sir.

By Mr. Thompson. That is all.

By the Court: We will take a ten-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1393 By the Court: Bring out the jury.

(Whereupon, the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: All right, gentlemen, proceed, please.

By Mr. Thompson: We offer in evidence, if the Court please, the documents which have been marked for identification as Defendants' Exhibit 5; Defendants' Exhibit 7 and 10 are two parts of one document, so we offer it as one, really; Defendants' 9; and Defendants' Exhibits 11 to 13, both inclusive—

By the Court: Are there any objections, counsel?

By Mr. McConnell: I have no objection to any of them, your Honor.

By Mr. Thompson: (Continuing)—and Defendants' Exhibits 15 to 27, both inclusive.

By the Court: They may be received in evidence.

(Thereupon said documents, so offered and received in evidence, were marked, respectively, as
1394 Defendants' Exhibits Nos. 5, 7, 10, 9, 11, 12, 13, and 15 to 27, both inclusive.)

By Mr. Meserow: I would like to ask Mr. Padrick a few questions, if I may, please.

By Mr. McConnell: What is this, may I ask? Is this cross examination?

By Mr. Meserow: Direct examination.

By Mr. McConnell: Well, I object to more than one counsel on direct.

By the Court: They are different defendants. The only question in my mind is whether he ought to preserve it until you get through with your cross examination. That is the only question.

You may proceed.

Direct Examination by Mr. Meserow.

Q. Mr. Padrick, from your previous testimony, it appears that you had occasion to observe the Parmelee cabs or equipment prior to October 1st, 1955, which were in operation between stations, is that correct?

A. Yes, sir.

Q. Did you ever have occasion to examine or ride
1395 in one of these cabs?

A. I have.

Q. Were they comfortable?

A. As comfortable as a taxi cab.

Q. Did you ever notice their cleanliness, whether they were kept clean?

A. I don't know that I ever noticed the particular cleanliness of the outfit.

Q. Were the Parmelee cabs air conditioned?

A. They were not.

Q. Were they radio dispatched?

A. They were not.

Q. Did Mr. Keeshin—when I say or refer to Keeshin, I am also including Railroad Transfer Service—did they ever use school buses in their operation?

A. Not that I know of.

1396 Q. Had the railroads prior to October 1st, 1955, for five or six years prior to that time, ever made any demands upon Mr. Markin, chairman of the board or president of Parmelee, to submit his profit and loss statements to the railroads?

By the Court: That has been covered. The answer was given to Judge Thompson's questions.

By Mr. Meserow: I think he asked about financial records, not about profit and loss statements.

By Mr. McConnell: He went into it at great length, your Honor.

By the Court: Yes, at great length. Objection sustained.

By Mr. Meserow:

Q. Has Mr. Keeshin submitted his profit and loss statements and financial statements, to the railroads in accordance with his contract?

A. He has.

Q. Did the Parmelee Company employ stewardesses at the railroad stations?

A. They did.

Q. Parmelee?

1397 A. Parmelee, no, they did not.

Q. Does Keeshin Company employ stewardesses?

A. They do.

Q. In addition to agents?

A. They do.

Q. Who pays for the interstation coupon that the traveling public use?

By Mr. McConnell: That was covered by Judge Thompson.

By the Court: I think that has been covered fully.

By Mr. McConnell: There is no contest about it.

By the Court: No contest on that at all.

By Mr. Meserow:

Q. Now there was some discussion here by questions as to whether or not the baggage conditions and rates were fixed with Keeshin some time in May or June of 1955, or later thereto. Can you tell us when the details of the rates on the question of baggage were fixed by the railroads with the Keeshin interests?

By the Court: I think fix is the wrong word. They were fixed by the contract.

1398 By Mr. Freeman: That is right.

By Mr. McConnell: He has got the right word. They were fixed.

By Mr. Meserow: Scratch out the word "fixed", and I will use the word "determined."

By the Court: He may answer.

By Mr. Meserow: Mr. Freeman would know the word "fix" pretty well.

By Mr. Freeman: I do know that word in this instance.

By the Witness: Will you please rephrase or let me have the question, please?

By Mr. Meserow: I will rephrase it.

By Mr. Meserow:

Q. When were the rates on the handling of baggage and the number of pickups—not pickups—the number of

deliveries between stations determined between Keeshin Company and the railroads?

A. In the first instance of the submittal by Keeshin, and I believe that was in December of 1954. It was the understanding that the transfer rate that was submitted would include the handling of the checked baggage from the placement at the tailgate of the baggage by the railroad employee.

1399 Q. In other words, the determination of this rate and the details of handling of baggage was not deferred until after Mr. Keeshin had signed his October 1, 1955 contract, was it?

A. No, sir, not to my knowledge. It was always understood he would handle that baggage.

Q. Did the Parmelee Transportation Company have a strike of its drivers in 1950?

A. They did.

Q. How long did that last?

By Mr. McConnell:: That has been covered.

By the Court: It has been gone over. Over six months, he said, isn't that right?

By the Witness: Yes, sir.

By Mr. Meserow:

Q. Mr. Padrick, Parmelee submitted their first written bid, their first bid, rather, to the railroads in March, on March 15, 1954, and in that bid, which is in evidence here—

By Mr. McConnell: You have the wrong year now.

By Mr. Meserow:

Q. (Continuing) 1955; excuse me—it had an acceleration clause with respect to a decrease in passenger

1400 traffic.

By the Court: I think he has covered that.

By Mr. Meserow: May I ask the question, your Honor? I have not finished my question.

By the Court: All right.

By Mr. Meserow:

Q. And this acceleration clause, according to the exhibit, provided for a one cent per coupon increase for every one per cent decrease in passenger traffic. That was in March of 1955.

At the present time, with the continuous decrease in passenger traffic, what would be the rate that the railroads would have to pay Mr. Markin had he gotten the contract, or Parmelee?

By Mr. McConnell: Judge Thompson went into that.

By Mr. Thompson: No.

By Mr. McConnell: He testified that it was stricken out anyway.

By the Court: Yes; he testified it was taken out before the consummation, and I will sustain the objection.

By Mr. Meserow:

Q. Did Mr. Keeshin have such an acceleration clause in his offer?

A. No, sir.

By the Court: He has answered that before.

By Mr. Meserow:

Q. Did Mr. Markin have a specific offer as to when he would replace his equipment with new equipment?

A. He did not.

Q. I believe you have testified that the Keeshin offer provided for replacement every thirty months?

A. I did.

Q. And has he replaced his equipment within thirty months?

A. His passenger-carrying equipment has been replaced, yes.

Q. After October 1, 1955 when the contract was awarded to Mr. Keeshin and he went into operation, did Parmelee actively solicit passengers at the stations?

A. They did.

By Mr. Meserow: That is all.

1402 By the Court: Do any of the other defendants want to ask any questions before we go on? If not, you may cross-examine.

By Mr. McConnell: Your Honor, a little later in this cross examination I will ask if I may have leave to sit down, because I want to work with documents here.

By the Court: Certainly.

Cross Examination by Mr. McConnell.

Q. This last statement that you made that there was no commitment by Mr. Markin or by the Parmelee Transportation Company as to when they were going to spend the money, wasn't it a fact he was going to spend it within six months to a year after the institution of the contract?

A. I don't recall that that was the answer to the question that was propounded at the time of the meeting.

Q. Well, I am referring now to his proposal of March 15, 1955, which was addressed to you, and which I ask you to examine and call your attention to the last sentence on the second page.

1403 I ask you if that was his proposal? That is Defendants' Exhibit No. 22.

By Mr. Meserow: Your Honor, I object to the question. I was deprived of the right to ask him a question about this March 15, 1954, or rather 1955, offer because it was not the final offer, and therefore I object to this question because this is not the final offer.

By the Court: Objection overruled.

By the Witness:

A. This document states:

"That such undertaking will require the expenditure of approximately $500,000 over a period of from six

months to a year, and we can only make this expenditure if we have a commitment from the railroads that we will be allowed to amortize it to December 31, 1961."

By Mr. McConnell:

Q. You understood, didn't you, that Mr. Markin or his company, rather, was proceeding to spend $500,600 on new equipment?

A. Yes, sir.

1404 Q. Going back to the beginning of your direct examination by Judge Thompson, I understood your testimony was that you were chairman of the Chicago Terminal Lines Association, is that correct?

A. I acted as chairman of the Chicago Terminal Lines committee, which is a committee of carriers, part of whom belong to one association, part of whom belong to another association, and part of whom belong to both associations.

Q. Well, aside from who they belong to or what association, I am going to read you the list of railroads here and ask you if they are members of the Chicago Terminal Lines Association.

1405 The Atchison, Topeka and Santa Fe Railway Company, the Baltimore and Ohio Railroad Company, Chesapeake and Ohio Railway Company, Chicago and Eastern Railroad Company, the Chicago and North Western Railway Company, the Chicago, Burlington and Quincy Railway Company, the Chicago Great Western Railway Company, the Chicago, Indianapolis and Louisville Railway Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Chicago, North Shore and Milwaukee Railway, the Chicago, Rock Island and Pacific Railroad Company, the Chicago, South Shore and South Bend Railroad, the Erie Railroad Company, the Grand Trunk Western Railroad Company, the Gulf, Mo-

bile and Ohio Railroad Company, the Illinois Central Railroad, the Minneapolis, St. Paul and Sioux Ste. Marie Railroad Company, the New York Central Railroad Company, the New York, Chicago and St. Louis Railroad Company, the Pennsylvania Railroad Company and the Wabash Railway Company.

Are those the 21 roads that constituted that association?

By Mr. Thompson: If the Court please, it isn't an association. It has been so testified a dozen times,
1406 To constitute that as a group is all right with me.

By Mr. McConnell: He said it was an association.

By the Witness: I don't believe, sir, that I ever testified to the fact they were an association.

By Mr. McConnell:

Q. All right; I won't quibble about the word. They are a group. You can call them anything you want to.

Is it the group of which you were the chairman?

A. They are the Chicago Terminal Lines.

Q. All right.

Also — were there also included in that some depot corporations?

A. The depot companies were called in to the meetings, yes.

Q. And what were they, again?

A. The depot companies were the Union Station, the Grand Central Station, the La Salle Street Station, the 12th Street Station — Illinois Central, and the Dearborn Street Station. I think I have covered the six — and the North Western Station, but operated solely by the North Western.

1407 Q. And they were all members of this group?

A. All of the operating companies were members of that group, yes, sir.

Q. Well now, you say it is not an association. Did it have any sort of an organization of any kind?

A. No, sir.

Q. Did it have any rules under which it operated?

A. No, sir.

Q. Did it have any by-laws?

A. No, sir.

Q. Who appointed you as chairman of this group?

A. I was appointed or requested to act as chairman of the group by the group.

Q. This group which has no organization, as I understand it, met from time to time on call?

A. They did.

1408 Q. And you issued those calls?

A. I did.

Q. Was the call of a meeting left within your sole discretion, or did someone request that you call a meeting?

A. No, sir; it was not left in my sole discretion. However, on request I called meetings.

Q. Would you call a meeting on the request of any of these member railroads?

A. I would.

Q. These railroads that you have named, are they all competitors of one another?

A. I don't think that all of them are competitive with one another.

Q. They are all seeking to get the money of the passenger, and in that sense they are competitors, are they not?

A. To the extent that on occasion I have known two or more carriers to, on through business, to join together in connection with the handling and solicitation of that through business.

Q. Well, since I am speaking about it, Mr. Padrick, one railroad, say the Pennsylvania Railroad as against the New York Central, those roads are competing

1409 for the patronage of the public, are they not?

A. Certainly between competitive points, but I

couldn't say the Pennsylvania would be competing with the Milwaukee Road.

Q. Because they are not running competitive routes, isn't that right?

A. That is right.

Q. You spoke of the reason for this transfer service as being to equalize the competition between the railroads. What did you mean by that?

A. Between the stations and the railroads. I mean — I meant by that, and I thought I tried to cover it at least fully, and I will try it again, that as an example the Burlington and the Pennsylvania come into the same station, but the North Western and the New York Central do not come into the same station.

Therefore, the station, the intrastation transfer becomes a competitive situation with the crosstown transfer.

Q. And that competitive situation is the competition to get a passenger to travel that particular route as against another route, isn't it?

A. That is correct.

Q. And this system here was designed to equalize
1410 that competition so one would not have a competitive advantage over the other, is that right?

A. That, apparently, is the thought, because they arranged for the payment of it. The railroads arranged for the payment of it.

Q. And the smaller committee, the subcommittee which was composed of the six railroads, those were the chief railroads which were effective, isn't that so?

A. Partly.

Q. Well, wasn't it based upon the volume that they were carrying as compared with other routes?

A. Partly.

1411 Q. What was the other part of it?

A. Because it was felt that each of the six sta-

tions should have representation on the committee.

Q. Then you had the two things involved?

A. That is right.

Q. I think I stated in my opening statement, to which exception was taken, that you at one time or another did act as chairman of this sub-committee. Did you ever act at any time as chairman of the sub-committee at a meeting?

A. I may have in years gone by.

Q. Didn't you, in the course of this negotiation over this contract, at one of these meetings act as the chairman?

A. I did not.

Q. Well, were you there representing any railroad in the sub-committee meetings?

A. No.

Q. In what capacity were you present in those sub-committee meetings?

A. Representing all of the railroads.

Q. Were you there officially, as an observer? You weren't one of the six of the group?

A. No. I think I have tried to explain that. I 1412 was there because of the knowledge of the arrangements that had been in effect for a long period of time, and the knowledge of the negotiations that had been carried on over a long period of time—

Q. Did somebody ask you—

A. I don't think I have answered that question fully.

Q. Pardon me. Go ahead and finish it.

By the Witness: Will you give me the last part?

(Whereupon the record was read as above recorded.)

By the Witness:

A. (Continuing) —and on request of the Chicago Terminal Lines.

By Mr. McConnell:

Q. Which was composed of all of these 21 railroads, six of which were on the committee?

A. That is right.

Q. So that you did attend all of these meetings, is that correct?

A. I don't believe that I attended all of them, but I attended most of them.

Q. With reference to this change or a possibility of a change, let's put it that way, from the Parmelee
1413 Company to some other company, were you asked to contact anybody?

A. I was.

1414 Q. And you were asked to contact Parmelee, were you not?

A. I was.

Q. And who else was it?

A. Chicago Gray Line, Hertz Driv-Ur-Self, the Chicago Hertz Driv-Ur-Self, and later New York Gray Line.

By the Court: You mentioned Willett, too.

By the Witness: No, sir.

By the Court: I thought you did.

By the Witness: I was not the one that contacted Willett.

By Mr. McConnell:

Q. Now when did this discussion first start as to the possibility of a change, and I am talking about discussions in the subcommittee?

A. Well, it was shortly after the meeting that was held early in 1954. The exact date I couldn't tell.

Q. Would it be in July of 1954?

A. I believe that some of the discussions took place prior to that time, but it could have been July.

Q. Wasn't it a fact that the thing that you were
1415 having these outside people come in and submit proposals on was primarily the question of getting a

lower rate on the coupon?

A. That is the way it started, yes, sir.

Q. And that was the sole question, wasn't it, at issue?

A. Finally it did not turn out exactly that way.

Q. I don't mean that it turned out that way, but I mean at that time.

A. At the first appointment of the committee, the reason for the appointment of the committee was to endeavor to determine whether or not we could obtain a lower rate from any other operator.

By Mr. McConnell: Is this document in evidence?

By Mr. Freeman: Yes.

By the Court: You may sit down any time you wish, Mr. McConnell.

By Mr. McConnell: Thank you.

By Mr. McConnell:

Q. I call your attention to a document which is in evidence here. It is a letter which was addressed to you, Mr. E. B. Padrick, chairman of the Western Passenger Association, under date of January 5, 1955, and it
1416 encloses a letter of July 21, 1954, "To All Concerned."

Apparently it was sent to all the list of railroads in your group.

I ask you whether you received that document on or about the time it was written? It is the last letter, Mr. Padrick, that I am primarily interested in.

A. All of these attachments were promulgated by me on January 11, 1955.

Q. Who requested you to promulgate them, as you put it? You mean by promulgate, you sent them around to the different people?

A. Mailed them out, that is right.

It was brought about by a letter from the chairman of the subcommittee dated January 5, 1955.

Q. And that was Mr. Bone of the New York Central?

A. That is correct.

Q. Did you read this document before you sent it out?

A. I presume that I did.

Q. July 21, 1954, was that after these difficulties that you had had with the railroads that you testified about—not the railroads, but with Parmelee, over not being able to get a commitment for labor?

1417 A. Well, I testified, as I recall, sir, to the fact that we had had difficulty in connection with labor negotiations over a long period of years.

Q. Yes. That was in 1947, 1948, 1949, and you had a strike in 1950?

A. That is correct.

1418 Q. So that was all behind this letter that was written here?

A. That is correct. I might say in connection with that, I believe that document is a document that was enclosed with the letter that I received from Mr. Bone.

Q. That is right, but you read it before you promulgated it, as you stated?

A. I did.

Q. And had you had trouble with Parmelee about this so-called profit and loss statement prior to writing this letter?

A. On several occasions during the negotiations requests had been made of Mr. Markin for a profit and loss statement.

Q. Which you hadn't gotten?

A. We hadn't gotten.

Q. And you had had requests for increases in rates prior to this letter?

A. We had.

Q. Now this letter states, which you sent out or which you promulgated, as you say:

"We would have it known that the railroads serving Chicago have enjoyed their relationship with the
1419 Parmelee Transportation Company, and they feel that the services of each has contributed to the success of the other, notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary and because the greater portion of the transfer fee paid the Parmelee Transportation Company is absorbed by the outbound railroads."

Would you say that that was the view of the railroads as far as you knew at the time that was written?

A. That letter, as I recall it, was prepared by the committee, and I subscribed to it as a member, a working member of that committee, not a voting member.

Q. Then you would sponsor it and did you sponsor it?

A. I would subscribe to it.

Q. And subscribed to it.

A. Yes.

Q. Now, at that time, what was the coupon rate that was being paid to the Parmelee company?

A. At what time, sir?

Q. At the time of this letter which you sent out
1420 or promulgated?

A. I don't recall the exact date on which these changes in rate have been made, but to the best of my knowledge in 1954—

Q. 1954 this is.

A. The rate was either $1.20 or $1.22.

Q. In all of your canvassing of all of these companies, and you canvassed how many—eight?

A. No, I didn't.

Q. No, I don't mean you. I mean your association. You know who were canvassed?

A. More than that, I believe. We tried to get more than that.

Q. Let's get their names. Willett was one?

A. Yes.

Q. Can you name the others? Railway Express, were they in it?

A. Railway Express.

Q. Gray Line?

A. Yes.

Q. Keeshin?

A. Yes.

Q. Parmelee?

A. Yes.

1421 Q. Ayres and Landon?

A. Ayres and Landon, and several others. I think all of them—

Q. Rock Island Transit?

A. Pardon me?

Q. Do you remember the Rock Island Transit?

A. I remember a letter coming from a Mr. Deane.

Q. Dixon, how about them?

A. Yes, I remember they were originally contacted.

1422 Q. Did any of them offer you a lower coupon rate than $1.20 at any time?

A. Yes.

Q. Which one?

A. Willett.

Q. What was his offer?

A. $1.10.

Q. Any other?

A. No, sir, not that I recall.

Q. What was the Willett proposal?

A. Well, it was a very brief letter, as I recall it now, that indicated that they might be interested, but they

would have to—I may be getting the letter mixed up with the interview, the first interview that was had. But anyhow, in the first letter that was sent in, they did mention a rate of $1.10.

Q. Did they stand by that rate or withdrew it or modify it?

A. They modified the rate, and then later withdrew entirely.

Q. So that out of all those people that you interviewed and contacted, the only one that proposed a lower rate was one who withdrew?

A. That is correct.

1423 Q. Now I don't want to get into a quibble with you over what the Parmelee Company is, whether it is the same now as it was earlier, but under the Parmelee Transfer name, the name of the service—and you have been familiar with this for twenty-seven years, I believe you said, didn't you? How many years?

A. Well, probably longer than that.

Q. Well, as long as you have been connected with it, do you know how many rate increases Parmelee had?

A. I believe there were seven or eight.

Q. Isn't it a fact that there have been only three in twenty-seven years?

A. I don't think so.

Q. All right. Do you recall that in 1927, the rate was 85 cents?

A. 1927, I am not sure that I knew exactly what the rate was.

Q. Do you recall that that rate of 85 cents ran until the year 1934?

A. I know that the rate was 85 cents, and it went down to 75 cents.

Q. So there was a decrease in the year 1934?

A. I believe so, yes, sir.

Q. And then it ran at 75 cents until 1942, didn't it?

1424 A. I believe so.

Q. And then it went back to where it was, 85 cents?

A. Eighty-five cents, that is right.

Q. So that in the period of time from 1927 to 1942, the only change in rate was down?

A. That is correct.

Q. Now the 85-cent rate ran from 1942 to 1948, didn't it?

A. I wouldn't--I believe that is correct.

Q. And in 1948, it got up to one dollar?

A. To a dollar, that is correct.

Q. And it ran at a dollar from 1948 to 1952, isn't that right?

A. The exact date I wouldn't recall right now, but it moved from one dollar to a dollar five.

Q. Wasn't it 1952 or thereabouts?

A. That is correct.

Q. So it went up five cents in 1952?

A. That is correct.

Q. And the next increase came in 1954, didn't it?

A. Yes, sir.

Q. And that is the $1.20 we are talking about?

A. But there was a retroactive rate increase.

Q. That was all part of the same negotiation,

1425 was it not?

A. It was, but it was a different rate increase, and you asked me how many rate increases, and I am trying to defend what I answered. It moved to $1.12½ and then to $1.20, and then it moved to $1.22.

1426 Q. All right. That was all part of that negotiation. Now what was the change that was made in

that one negotiation? That is the negotiation after the $1.20 rate.

A. After the $1.20?

Q. Yes.

A. The change after $1.20 was to $1.22.

Q. And there was a retroactive feature of, what was it, 12 cents or 12½ cents?

A. 7½ cents I guess it was, from $1.05 to $1,12½, and it went back to the first of the year retroactively; and then the $1.20 went back retroactively to the first of the particular month that the negotiation was taking place, and I believe that was April.

Q. What did you end up with as your final rate prior to the call of this group, as you call it, in July of 1954?

A. $1.22. I will have to qualify that statement because of the way in which you asked your question, if I may.

Q. You may. Make any qualification you want.

A. At the start of the negotiations, I believe you said, and I cannot recall whether at the start of the negotiation the rate was $1.22 or $1.20, but it did eventually 1427 go to $1.22 during the negotiations.

Q. That was tops?

A. That was the top.

Q. Now can you recall any reductions that were made in the rate, and I am referring now to the rate on transfer of military personnel.

A. Yes. There was a reduction in connection with the handling of military personnel—furloughees, not all military personnel. The reduction was only applicable in connection with the railroads reduced furlough ticket.

Q. That is men home on leave?

A. That is right.

Q. Do you recall that on July 1st, 1942 that rate for those people on furlough was reduced from 85 cents, the regular transfer, to 60 cents?

A. I recall that.

Q. Do you recall further that on July 1st, 1954 it was further reduced to 50 cents?

A. I believe it was.

Q. Now there was an increase in the military rate until it got up in 1954 to 85 cents, do you recall that?

A. That is correct. I would like to call it the 1428 military furlough rate.

Q. Now can you tell us approximately what proportion of your military traffic was involved? I will withdrew that question.

What proportion of your total coupons constituted the military personnel?

A. I don't know. Well, there are three, sir, three questions, I believe, that you asked me there. If you can break them down into three parts, I might be able to answer.

By Mr. McConnell: Read the question, please.

(Whereupon the question was read as above recorded.)

By Mr. McConnell: I don't see more than one question there.

By the Witness:

A. The total military personnel at that time?

By Mr. McConnell:

Q. Yes.

A. I would say the majority of the traffic was military traffic, but not military furlough traffic.

Q. What proportion of it was furlough traffic?

A. I do not know exactly, but it was small in comparison with the total military traffic at that time.

1429 Q. And you are certain that this rate only applied to furlough traffic and not all military traffic?

A. I am sure of that.

Q. We have had some discussion here about profit and loss statements. You were never at any time, were you, on a basis with Parmelee where you were paying them a profit on top of their cost?

A. I wouldn't know that because I never received a profit and loss statement from them.

1430 Q. I know, but you weren't making your agreement to pay on the basis of a profit on costs? It wasn't a cost-plus contract at any time, was it?

A. No, sir.

Q. Never at any time did the variation of their costs change your rate?

A. I don't believe it did. We never received a profit and loss statement.

Q. Never at any time did any variation in their profit change your rate?

A. I don't think it did. We never received such a statement.

Q. All right. Then it didn't, did it?

A. I think I answered that question.

Q. I think you did, and I am trying to get you to reaffirm it.

A. I will reaffirm it.

Q. You spoke this morning in your direct examination about the reason given you why the profit and loss statement of the Parmelee organization was not made available to you was that there were various operations included in the Parmelee setup, is that right?

A. That is right.

Q. That was the fact, wasn't it?

1431 A. That was the fact. That was the reason that was given at the time.

Q. What I am getting at, you know of your own knowledge that is not a false statement, that it is a fact that they do have a number of operations?

A. They do have a number of operations, but the question as to whether or not it was possible to divide the expenses as between the transfer operation company and the others, I wouldn't know.

Q. That is an accounting question?

A. That is right.

Q. You are not charging that the statement that was made is false?

A. I am not.

By the Court: Are we all looking at the clock now?

By Mr. McConnell: It is a good place to stop for me.

By the Court: Two o'clock, please, and mum is the word.

(Thereupon a recess was taken to 2:00 o'clock, p.m., of the same day, Wednesday, May 4, 1960.)

1432 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Wednesday, May 4, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. John Borst, Jr.,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

1433 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1434 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.

By the Court: Bring out the jury, please.

(The following proceedings continued in the presence and hearing of the jury as follows:)

By the Court: All right, gentlemen, proceed.

EARL B. PADRICK, called as a witness on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued) by Mr. McConnell.

Q. Mr. Padrick, in your direct examination this morning you spoke about an area of 82 miles from from Chicago, which was excluded from this coupon as being a part of the general fare of the passenger. Do you recall that testimony?

A. Yes, sir. I recall the testimony, but it could have been yesterday.

Q. That was 82 miles outside, and you picked Milwaukee as the point from which to measure it, is that it?

A. The point that has established the competitive
1435 feature that we spoke of earlier in your cross examination of me, it has been decided by the railroads, the competing railroads, the Milwaukee and the North Western, that at Milwaukee, which is 82 miles from Chicago, they would not apply the transfer charge, and that at an area of approximately 20 miles from Chicago is where the full transfer charge is applied, but beyond that point of 20 miles from Chicago, the amount of the transfer charge that is paid by the public would graduate itself downward until it would disappear entirely at 82 miles.

Q. Well, the passenger that wanted to utilize the transfer service had to buy a coupon, didn't he?

A. No, the coupon would be included in the ticket, but he would be paying that charge for the coupon and through ticket.

Q. In other words, if he originated, if his travel originated more than 82 miles outside of Chicago, he got the coupon included in his ticket, is that right?

A. No, sir; that is not the way I stated it.

Q. Well, if he got on a train more than 82 miles outside of Chicago on a travel through Chicago outside of Chicago so he had to transfer himself and his baggage, the coupon was included in his ticket, wasn't it?

1436 A. That is correct.

Q. At no charge to him?

A. That is correct.

Q. But if he got on within 82 miles, then there was a charge made for the coupon, is that correct?

A. No, sir, that is not correct.

Q. No charge made?

A. The charge is on the destination end of it. For example, if the ticket were issued at Gary, Indiana, and it read through to Denver, Colorado, there would be no

charge. The coupon would be included in the ticket, but there would be no charge.

On the other hand, if the passenger bought his ticket at Gary, Indiana, and it was, and the destination might be Wheaton, there would be some charge included in the ticket, but the coupon would also be included in the ticket.

1437 Q. Well, aren't you telling us that he has to pay for his coupon in that situation?

A. In the situation of Gary to the destination end, not from the nearby point, but when it is to a nearby point, and the question that you originally asked me, I believe, was that if he bought his ticket within the area short of 82 miles, would be have to pay for his ticket, and the answer there is no, sir, he would not.

Q. I understand that, and I didn't mean to ask any such question, but maybe I did. I am talking about your second situation where you are going from Gary to Wheaton.

A. That is correct. I believe Wheaton is over 20 miles from Chicago, and under the circumstances a portion of the transfer charge would be paid by the passenger, and a portion of it would also be paid—be absorbed by the receiving railroad.

Q. Well, if the rate or the coupon was higher by one company than another, the traveling public in that last situation would have to pay more, wouldn't they?

A. That question, sir, I cannot answer, because you have asked the question as to whether one railroad
1438 against another, and that isn't—I can't answer the question, because there is no such condition.

Q. I didn't say anything about one railroad as against another. I am talking about one transfer company as against another and the coupon charge.

A. I am sorry. I took it to be railroads. The same

situation prevailed, regardless of what transfer company has been in existence, in business.

Q. Yes, but if transfer company No. 1 charged a higher rate than transfer company No. 2, that would result in a higher charge to the passenger, wouldn't it?

A. It could, yes, sir.

Q. That is all I am trying to establish.

By Mr. McConnell: Mark this as Plaintiff's Exhibit No. 107, for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 107 for identification.)

By Mr. McConnell:

Q. I show you a document which I have marked for identification as Plaintiff's Exhibit No. 107, which purports to be a copy of the amendments to the Parmelee proposal under date of May 20, 1955, which was
1439 submitted to Mr. S. W. Bone, passenger traffic manager, who you have testified was the chairman of this sub-committee, and I ask you if you can identify that as Parmelee's modified proposal.

A. Yes, sir; this was received by me on the 23rd of May, but I received advice from Mr. Bone concerning it by telephone late in the afternoon of May 20th.

1440 Q. Now on that proposal, the top coupon rate that was to be charged during the entire life of the contract by Parmelee was $1.25, was it not?

A. $1.25 for the last two years.

Q. All right. Isn't it a fact that Mr. Keeshin's company is now charging $1.27 per coupon?

A. They are.

Q. In this letter, I want to call your attention to this statement—

By Mr. Thompson: The document isn't in evidence here.

By Mr. McConnell: Well, I offer it in evidence at this time as Plaintiff's Exhibit 107. It purports to be the modification.

By the Court: It may be received in evidence.

By Mr. Thompson: He is putting it in in our case. It isn't his time to put documents in evidence.

By Mr. McConnell: I can put it in with the consent of the Court at any time.

By the Court: Proceed.

1441 (Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 107.)

By Mr. McConnell:

Q. In this document it states, "To date Parmelee has served the railroads for 102 years with no written contract, only the railroads' verbal commitment."

Is that true or do you know?

A. Verbal commitment and letters of understanding, sir.

Q. Now I think you said in answer to Judge Thompson's questions on your direct examination that you were always faced with the question in your mind of whether or not the labor relations with Parmelee would continue from year to year, each time the question came up at the end of each year. Is that right?

A. Not at the end of each year, but if I said the words "continually faced", I did not mean continually faced. I meant that periodically, and by periodically faced with it, yes, it was on almost a yearly basis.

Q. Well, now, as a matter of fact, that was the way you were working with Parmelee, wasn't it, on
1442 almost a year-to-year basis? You had no definite period of time which Parmelee had a contract for.

A. I presume that it could be said that we were working on a day-to-day basis.

Q. That is right. So that Parmelee couldn't do much more than make a year-to-year contract with labor, could they?

A. I can't testify to that.

Q. Well, they had no assurance from you that they were going to have any business with you except from year to year, did they?

A. With the railroads? Business with the railroads?

Q. Yes.

A. It even could have been less than that.

Q. All right. So they had no assurance upon which to negotiate any longer than a year-to-year contract with labor for this business, did they?

A. I can't testify to the fact that over a period of a hundred two years as has been stated here, of a continued situation that they might not be able to negotiate a contract that would be a favorable one and keep from increasing rates over that period of time.

1443 Q. Well, let's just take the time you were there. That is something over 27 years, you said. There was never any time while you were there that they had any assurances from the railroads that they would be able to keep this business longer than a year, was there?

A. I have testified to the fact that there was no written contract, and that there was no verbal contract other than some letters of understanding.

Q. And Keeshin was negotiating a contract with labor, as I understand it, on the basis of having a five-year agreement with the railroads?

A. That is correct.

Q. For which he was going to have the business?

A. That is correct.

Q. Now, do you know the union that Parmelee used?

A. I do not.

Q. It was an AFofL union, wasn't it, the Teamsters Union?

A. Well, it seems to me that there were two unions that was under the negotiations with Parmelee. I believe that one was a drivers' union, and who they belong to, I do not know. But there was another union that had to do with their agents and their clerks, I believe, and that I do know was an AFL union.

1444 Q. And that was a Railroad Brotherhood union?

A. Whether it was a Railroad Brotherhood union or not, that I don't know, but I do know it was an A.F. of L. union.

Q. Did you know that the union Mr. Keeshin proposed to use was the so-called outlaw union, Independent Teamsters Union?

By Mr. Thompson: Well, we object to "outlaw union." I don't know of any outlaw unions.

By the Court: If the witness knows, he may answer. If he doesn't, he may say so.

By the Witness:

A. I don't know.

By Mr. McConnell:

Q. Was there any question in the minds of the committee about whether or not peaceful labor relations could continue with a new union moving in here, superseding the union which was being used by Parmelee?

A. The question was asked of Mr. Keeshin, I believe it was in the May 19th, and also in the preceding meeting, by the committee, and he gave assurances of the fact that over the three year period there would be no labor difficulties.

Q. Did he tell you what he had done with refer-

1445 ence to that subject?

A. Yes, he did.

Q. What did he tell you?

A. He indicated that he was ready to sign an agreement with the labor union, the same organization that

was handling—the same organization under which he had a drivers' contract with other of his operations.

Q. Wsn't that with Mr. Edward Fenner of the Drivers' Union, Local 705?

A. Later I found that out.

Q. Now actually, you did have some labor troubles, jurisdictional labor troubles, when the Parmelee operation ceased and the Keeshin operation started, didn't you?

A. Not that I was personally aware of.

Q. Do you recall any discussion with Mr. Keeshin on this subject after the contract went into effect?

A. There was some discussion in connection with station handling of checked baggage, yes, I remember that.

Q. What was that?

A. It was in connection with whether or not Keeshin would handle the loading of the trucks at two of the 1446 stations or whether he would pay the railroad for having their employees load the trucks.

Q. All right. What was the outcome of that discussion?

A. The final outcome of it is in the operation today, and that is that at the North Western Station, there is a payment made to the North Western for North Western employees loading the trucks, and I believe the same situation is also true at the La Salle Street Station.

Q. Now you received, as I understand your testimony, Mr. Keeshin's proposal December 15, 1954. When I say "you", I am talking about your sub-committee.

Was there ever any change in the rates which he proposed after that first proposal, December 15th?

A. The first proposal had the first year at $1.20 with an escalator clause of one for five, that is one cent increase for each 5 cents of increase in wages.

Later he submitted a fixed rate for the first three years, $1.20, $1.22, and $1.23, and with the same escalator clause that I just mentioned for the last two years of the contract.

Q. And when was that proposal submitted?

A. I don't remember the exact date. It was during the negotiations.

1447 Q. Was it after December 15th?

A. Yes.

Q. Was there any discussion with him to try to get him to put a ceiling on that escalator clause?

A. There was a discussion that took place, as I recall it took place on May 19th, that some one of the committee asked the question as to if he had any possible knowledge of how much the escalator might run, that is, the wage escalator.

1448 Q. Well, was there any request that he put a ceiling on it?

A. I didn't hear a request that he put a ceiling on it, no, sir.

Q. Didn't he refuse to put a ceiling on it?

A. I didn't hear him refuse to put any ceiling on it, because I did not hear any request for him to put a ceiling on it.

Q. He didn't put any ceiling on it at any time, did he?

A. No, sir.

Q. You told us this morning, as I remember your direct examination, that at the meeting of May 19 this committee of six had reached the opinion that this contract should go to Keeshin. Is that what you said?

A. I don't know positively. It seemed to me to be the tenor of the meeting, but there was no vote taken, so I couldn't be assured of that, and I testified to the fact that there was no vote taken at that time.

Q. I call your attention to a document which has been

received here in evidence as Plaintiff's Exhibit No. 9 on the subject of the Parmelee transfer from Mr. An-
1449 derson to Mr. Duffy. Do you know those gentlemen?

A. I do.

Q. Did you ever see that document before? (Exhibit handed to the witness.)

A. I do not recall having seen that document before.

Q. Well, who is Mr. Anderson?

A. General passenger traffic manager of the Santa Fe Railroad.

Q. And he was on this committee, was he not?

A. The Santa Fe Railroad was named on the committee, but I believe that the man who participated in the arrangements was Mr. Sloan.

Q. Well, do you know whether he was there on May 19, at your meeting on May 19?

A. I believe I have testified to the fact that I knew that Mr. Sloan was there, but of others that were there—and there were several—I don't know that Mr. Anderson was there. He could have been, but I don't know that he was.

Q. All right. I am reading from a document which is in evidence, in which it is stated:

"We have operated with Parmelee without a con-
1450 tract, but it is felt that in view of expense to be incurred in acquiring new equipment, the operation should be covered by contract after expiration of present letter agreement June 30, 1955. Mr. Markin now submits a proposal of $1.20 for transfer of passengers and baggage effective July 1, 1955, with an increase of one cent in the coupon rate for each three cents of wage increase with a maximum of a five-cent increase over the five-year contract and a maximum coupon rate in each year

as follows: July 1, 1956, $1.22; July 1, 1957, $1.23; July 1, 1958, $1.24; and July 1, 1959, through June 30, 1960, $1.25."

Was that the proposal?

1451 A. May I ask the date of that letter, please?

Q. Yes, sir; it is May 23rd, 1955.

A. I thought so. It takes in not only the May 19 meeting but also the final proposal that was made by telephone and then in writing by the Parmelee company of May 20.

Q. Well, then, it was his proposal?

A. That is right.

Q. Mr. Markin states that he will spend $500,000 in the next 18 or 24 months if he is a successful bidder to replace trucks with a new type of vehicle. Do you recall him stating that?

A. I don't argue with the fact he said he would spend $500,000 in connection with the purchase of new equipment. He did say that.

Q. Well, I thought you said in your direct examination this morning that you didn't know when he was going to spend it, that he had never made any commitment to spend it at any time.

A. I beg your pardon. I didn't say anything of the kind.

Q. All right, fine; we are in agreement.

A. I said he did say, and I said that several times in my testimony, that he indicated that he would

1452 spend $500,000 on new equipment. I said that he did not say or that he did not place any time of replacement of equipment, and he did not.

Q. All right. Here he says further:

"If he is a successful bidder to replace trucks with a new type of vehicle and add 30 new 12-passenger limousines to his present fleet of 20 which

will enable the retirement of the older 7-passenger limousines. The other Parmelee services will be continued unchanged, baggage transfers being handled on a two-a-day basis which has been satisfactory." Was that the proposal?

A. There is one part of what you are asking me to testify to now that I must straighten out to keep my previous testimony in line.

Q. All right; you can straighten out anything you want. Just go right ahead.

A. Thank you, sir.

There was, and I did testify to the fact that $500,000 would be spent by Parmelee company in obtaining new equipment. I testified to the fact also that when he was asked on what regularity he would replace this
1453 equipment, he said that he would replace it at the discretion of the operating company, that he felt that was their prerogative.

Now, in connection with the first replacement of equipment that was old to start with, I have no quarrel with that, but I do say this; that he did not and he never answered the question of whether 24 months or 30 months or after the first wave of new equipment was purchased, when it would be replaced. It covered a period of amortization of six and a half years. That is what I testified to, and I will stand by it.

Q. All right. I am just asking you this; whether this statement is true which was made by Anderson that:

"Mr. Markin states that he will spend $500,000 in the next 18 or 24 months."?

A. That is true.

1454 Q. All right. Continuing, he says:

"There will be a final meeting of the committee on June 3rd to submit a recommendation to all Chicago Terminal Lines. We propose to recommend the con-

tinuance of our arrangement with Parmelee because of our long association with that company and its satisfactory transfer of passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition we will avoid the possibility of labor trouble in connection with operation by a new company with a different union."

There was one member at least on that committee that was not in agreement on Keeshin, isn't that right?

A. Apparently from that letter, but that is not the tenor of the meeting that I indicated when I left it.

Q. Well, Mr. Duffy was his superior, was he not, 1455 and he is reporting to Mr. Duffy?

A. Vice president of traffic of the Santa Fe Railroad, yes, sir.

Q. Who was Mr. Small?

A. He is the general passenger agent of the Illinois Central Railroad.

Q. Of the Illinois Central?

By Mr. Thompson: No.

By the Witness: Mr. Small?

By Mr. Thompson: Mr. Small.

By Mr. McConnell:

Q. Mr. Small is with the North Western, isn't he?

A. Pardon me. I was think of Mr. Smart. Mr. Small is in the freight department, freight traffic manager of the North Western Railroad. You are correct.

Q. And Mr. Feucht was president of the North Western, was he not?

A. He was at that time, sir.

Q. I show you a document which has been marked for identification as Plaintiff's Exhibit No. 5, which pur-

ports to be a report under date of May 27 from Mr. Small to Mr. Feucht.

By Mr. Freeman: It has been admitted.

1456 By Mr. McConnell: Is it in evidence?

By Mr. Freeman: Yes.

By Mr. McConnell: All right.

By Mr. McConnell:

Q. I won't show it to you. I will just read from it. Mr. Small writes to Mr. Feucht under date of May 27, 1955:

"The passenger traffic officers' committee, which has been negotiating, consists of the following railroads with Mr. Padrick, chairman of the Western Passenger Association, included: New York Central, Pennsylvania, Illinois Central, Santa Fe, Baltimore and Ohio, Chicago and North Western. The attached statement is a brief outline of the present arrangement with Parmelee and the arrangements proposed by Parmelee and by Keeshin. The Willett Company has indicated they are no longer interested. It is the view of our passenger people, and I understand the same view is held by the committee members from the

1457 other railroads, that Parmelee should be awarded the contract because of their years of experience, their financial integrity and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract."

Do you still take the position that it was the unanimous view of this committee that they were going to vote for Keeshin on May 19?

A. I did not say that.

Q. I thought I just asked you whether you did?

A. I did not say that.

1458 Q. Well, is it or is it not your position now that that committee was in favor of Keeshin or in favor of Parmelee on May 19?

A. It was my opinion as an individual on that committee that the concensus of the meeting was that they were in favor of the Keeshin proposal at that time, and that is before the letter of the 20th.

Q. That was May 19th?

A. Yes, that is right.

Q. Well, look at this letter.

Isn't he referring to the meeting of May 19? There wasn't any other meeting, was there?

A. The date of this letter is May 27, and I would like to say there that they took into consideration not only the proposals that were made at the May 19 meeting to which I referred and testified to earlier, but also the later proposal of May 20 by Parmelee. That could have changed somebody's mind.

1459 Q. Wasn't your testimony this morning as follows:

"They made a roundup of the thinking of the people there at the meeting, and as I recall, it was felt at that time that the offer of Keeshin should be accepted."

A. I still stick by what I said.

Q. Well, that is a little different from Mr. Small's view. Do you agree to that?

A. I will agree to it, and I will agree to it because of one situation only, and that is because after the meeting on the 19th, there was a change made in the bid of Parmelee, and that could have changed the minds of some of the individuals.

Q. All right. What was that change?

A. You presented it here in testimony in a letter.

Q. This letter, Plaintiff's Exhibit 107?

A. I believe that that is it. If you will let me see it I will be glad to—

Q. You may have it.

A. Yes, sir, that is the one I refer to.

Q. Attached to this document, which is in evidence here as Plaintiff's Exhibit 5, is a comparision of the two proposals.

1460 Will you examine that and tell us whether that correctly states those two proposals; what the differences are or what they each are.

A. With the exception of a few minor details, that would be my understanding.

Q. Who was Mr. Brennan?

A. Mr. Brennan, I believe, at that time was either passenger or traffic manager or general passenger traffic manager of the North Western Railroad.

Q. Was he also present at that May 19th meeting?

A. He was.

Q. I call your attention to a statement made by Mr. Brennan on the last page, Page 5 of this document marked for identification Plaintiff's Exhibit 2, and ask you to read that—not out loud, but to yourself.

A. I notice that this is also dated May 23.

Q. Yes. You notice also that it shows Mr. Brennan is in favor of the Parmelee people, don't you?

A. I can't testify to that because I have been permitted to read only the latter portion of the document.

Q. Read it all.

By Mr. Thompson: If the Court please, the docu-
1461 ment isn't in evidence. To have the witness sit here and read three pages of a letter somebody else wrote is certainly a waste of time.

By Mr. McConnell: He says he can't tell me unless he reads it.

By the Court: He may read it.

By the Witness:

A. He indicates that as a request that they be permitted to cast a vote in favor of Parmelee.

By Mr. McConnell:

Q. That was right after the May 19th meeting, wasn't it?

A. Yes, sir.

And also after the letter or the telephone call to Mr. Bone of May 20th.

Q. All right. Now after this time, let's include in this the phone call or the modification which I showed you here, which is under date of May 20, 1955, which is Plaintiff's Exhibit 107, there were no new proposals of any kind back and forth by either of these parties, were there?

A. No, sir.

Q. That was it, wasn't it?

A. Not that I recall.

1462 Q. That was it?

A. Yes, after the proposal of May 20th by Parmelee.

Q. So that somebody changed their vote after that. It didn't come about by any change in the proposal?

A. Well, changing of a vote, I don't know how a vote could be changed when one was not taken at the May 19th meeting.

Q. All right, indication of opinion. If the opinion changed, it wasn't because of any change in proposals? That is what I mean.

A. I claim that it was.

Q. All right, what proposal?

A. The May 20th proposal could have changed the thinking of the meeting of May 19th.

Q. And changed it in favor of Parmelee?

A. I don't know whether it changed it in favor of Parmelee by all or not.

Q. Well, you know that it changed it in favor of three, at least.

A. You have indicated that.

Q. At least they were indicating their vote in favor of Parmelee at that time?

A. That is correct.

1463 Q. What I am asking you is this, that after that proposal was received, was there any other proposal from Markin or Parmelee or from Keeshin or from his company made?

A. None that I know of.

Q. I show you a document which has been marked for identification as Plaintiff's—apparently it has been received in evidence as Defendants' Exhibit 21, which is a letter on the letterhead of the Parmelee Transportation Company, under date of March 15, 1955, addressed to you, and signed by the Parmelee Transportation Company by Morris Markin, Chairman of the Board.

I ask you if you received that letter and read it.

A. This is the same one that I testified to a while ago that I did receive, and I read it, and transmitted it to the committee.

Q. Now I notice that you drew a circle around paragraph 3 on the third page of this. Did you do that?

I said you did it, but I don't know whether you did or not. I am asking you whether you did.

A. I believe those are my markings.

Q. That is when you agreed to take out the

1464 escalator clause, isn't it?

A. No, sir.

Q. What is it?

A. This was made as a reminder to me in my file that in a meeting with Markin, we indicated to them that we would not under any circumstances accept, that the railroads would not accept an escalator clause based upon the rise or fall of business.

Q. And he agreed?

A. He did not agree at that time.

Q. Well, he did agree eventually, didn't he,
A. He agreed on May 19th, yes, sir.
Q. And took it out?
A. He took it out at the May 19th meeting.
Q. Now he says in this letter to you:

"You will recall that towards the end of 1954, we were advised by you that a committee had been appointed by the railroads to explore the possibility of securing a lower rate for the services then and presently performed by Parmelee Transportation Company, and that they had offered the following suggestion:

"1. that a study be made of the possibility of operating a fleet of tractors and trailers for the transfer of baggage between railroads."

Had you suggested that to Mr. Markin?

A. The committee did not. That did not—I think Mr. Markin was a little confused with respect to where that came from. The committee did not recommend the use of trailers or tractors to Mr. Markin, but at a meeting the Chicago Terminal Lines, in which a study of all of things that were being performed by Parmelee were considered, and to try and endeavor to find ways and means of cutting the cost so that the coupon rate would skyrocket, then we endeavored to suggest at that meeting, and I believe I was chairman of that meeting, whether or not he had ever given consideration to the use of tractors and trailers for the operation. That was some-time well in advance of the May 19th meeting.

Q. Now he wrote back and he tells you:

"We have made an exhaustive study of these suggestions and have come to the following conclusions:

"One, regarding the operation of a fleet of tractors and trailers for transfer of baggage:

"A, the loading and unloading facilities at the depots are not adequate to accommodate the many trailers which would be required to perform this baggage service as the trailers would stand idle to wait being loaded from time to time by the railroad baggagemen until pickup time;

"B, the railroad baggage employees would be required to load and unload the trailers, and we have found that this kind of work is not being done presently at all depots and it is doubtful if the employees now doing this kind of work could be required to do it without additional compensation and sanction from their union;

"C, the initial investment required for the change-over in the type of equipment which we are presently using to trailers, which would be used solely for storage between pickups, could not be justified;

"D, the driver manpower savings which could be
1467 effected by a tractor-trailer operation would be offset by the additional cost of loading and unloading of the baggage by the railroads because a tractor driver is not permitted by the union to help load or unload;

"E, the quality of service would be impaired because all of the railroads would not receive equal service."

Then referring to the second suggestion:

"In order to meet a fixed schedule and to provide a better service, it would be necessary for the railroads to coordinate train arrivals and departures, and as you know, this could not be accomplished due to conditions beyond the railroads' control. Without such coordination, a fixed schedule would destroy the flexibility of the service to the detriment of the passengers."

Now, he says:

"On February 4, 1955, we were advised by you to abandon the first two ideas and concentrate our efforts on the third suggestion regarding the possibility of
1468 reduction in the price of coupons through economies to be obtained without any impairment of our present service, and this has been given a great deal of study."

Now what I want to ask you is, did you on February 4, 1955 advise Mr. Markin to abandon these first two ideas?

A. I don't recall that that was the exact verbiage used, but it was very apparent that we were not going to get any place wtih discussions because of the fact that he had stated that the cost of replacing equipment would be so much that the saving would not be, could not be had, and under the circumstances, why, we felt that there was no use in arguing anymore with him about it.

Now I do not agree, however, with the facts as he outlined them in his letter as far as my observation of the facilities were concerned.

1469 Q. Well, you didn't write any answer back in response to this, did you?

A. No; I was directed to advise him along the lines that he stated, but not specifically.

Q. Who was Mr. Dean?

A. Mr. Dean—I don't know his specific title, but he is station superintendent of the LaSalle Street Station, or at that time he could have been in charge of the baggage service at the LaSalle Street station. I know of him, but his specific title I do not know.

Q. Well, would he know whether or not the work could or could not be reduced by the use of trailer trucks in this operation, do you think?

A. Well, I am not sure that he would know that. I don't believe that Mr. Dean has ever had any experience in the trucking business.

Q. Would it be a fact that the use of trailer trucks would call for a supplementary service to handle corpses?

A. I might go back a ways and indicate that in connection with the handling of corpses in trucks, that the committee, the Chicago Terminal Lines, were never quite satisfied with that.

1470 Q. Well, if they weren't satisfied with that, they wouldn't be satisfied with putting them in trailers, would they?

A. No, sir, they would not.

By Mr. Keating: I object to that question, your Honor, and I object to the witness testifying about all the railroads in Chicago.

By the Court: I didn't quite get the objection. What was the objection?

By Mr. Keating: I am objecting to the witness testifying as to what all the railroads in Chicago thought or what they believed or what they understood. Obviously, it is a state of mind, and obviously he is attempting to testify what some twenty-one companies contemplated or thought.

By the Court: What was the last question?

(Thereupon the record was read as above recorded.)

By the Court: I will sustain the objection to the form of the question.

By Mr. McConnell: I want to point out to your Honor that this witness has testified he was the agent of the

1471 twenty-one railroads.

By the Court: Yes, but that isn't the basis for sustaining it. What he testified to in meetings was his own reaction to it, but the form of the question is what I am sustaining the objection to.

By Mr. Keating: Your Honor, I believe the witness testified he was the agent only for signing the contract.

By the Court: That is correct.

By Mr. McConnell: He testified he was the agent representing all the railroads sitting in this subcommittee.

By Mr. McConnell:

Q. Isn't that right?

A. I was acting as chairman of the meeting at which all of the Chicago Terminal Lines met, and I was directed by those lines to represent other than the lines that were named on the committee on that committee, without right to vote.

By Mr. Freeman: Would this be an appropriate time for a short recess?

By Mr. McConnell: I have one more document I can finish with here before you break.

1472 By the Court: All right.

By Mr. McConnell:

Q. I will show you a document which is marked for identification, which is in evidence—

By Mr. Freeman: It is not in evidence.

By Mr. McConnell:

Q. (Continuing) —identified as Exhibit No. 7.

By Mr. Freeman: I am sorry, Mr. McConnell. It is in evidence.

By Mr. McConnell: I thought it was.

By Mr. Thompson: Get together.

By Mr. McConnell:

Q. And I ask you whether or not you have seen that document before or the original of it. It is a photostat of a document.

A. I do not recall ever having seen it.

Q. Well, it is in evidence here.

By Mr. Thompson: Let me see it.

By Mr. McConnell:

Q. And I want to read to you from it.

By Mr. Thompson: All right.

By Mr. McConnell:

Q. This is Plaintiff's Exhibit No. 7, which purports to be a letter from J. L. S., J. L. Sloan to Mr. R. T. Anderson. Do you know those gentlemen?

1473 A. I do.

Q. Under date of February 15, 1955.

Was there a meeting of the Chicago Terminal Lines February 1?

A. I wouldn't recall the date right now.

Q. All right. Maybe this will refresh your recollection a little. I don't know whether it will, but we will try.

"At a meeting of the Chicago Terminal Lines February 1 report of committee studying transfer arrangements at Chicago was submitted. Chicago Terminal Lines were advised that we had received one bid for transfer of passengers and baggage from Keeshin at approximately the same rate Parmelee is now charging and one bid for transfer of baggage only. Chairman Padrick advised the Lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

1474 Did you so advise the Lines?

A. I don't believe that that states that I advised the Lines. I believe it states—I will say now that you have refreshed my memory of the meeting. That is the first thing. I will answer that question.

Then, in connection with the last question that you have just asked me, I do not believe that I advised the Lines as you intimate, that it was my opinion that the rate should be $1.00 to $1.10, but I advised the Lines that that was my understanding of the committee's view, and

everyone that was on the committee was sitting there in the meeting at that time.

1475 Q. And they didn't get up and object to your statement of their view?

A. They did not.

Q. I thought what I asked you was whether it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00 including baggage was submitted by some transfer company.

Was it the view of the committee?

A. Yes.

Q. And the committee you are referring to was the committee of six railroads which were dealing with this problem?

A. That is correct.

By Mr. McConnell: Now I am ready for the recess, your Honor.

By the Court: All right, ten minutes.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1476 By the Court: All right, bring out the jury, please.

(Thereupon the following further proceedings were had in the presence and hearing of the jury:)

By the Court: Those ten minutes get longer, don't they?

All right; proceed.

By Mr. McConnell:

Q. After this Keeshin Company went in, as you testified this morning, there came a time when they started to do the work that was previously done by the Parmelee Company. They had employees who had not been doing this work before, isn't that true?

A. I could only assume so. I do not know where their employees, all their employees, came from.

Q. Well, you told us this service was unique in Chicago, and that Parmelee was the only one that was doing it and that Keeshin had never done it before. Do you agree with all those statements?

A. I do.

Q. So that the Keeshin Company or its personnel had never had any experience in this transfer business?

A. I can't testify as to that because I don't know 1477 exactly who all their personnel were.

Q. Well, you knew that the Keeshin Company had never been in existence before their agreement with your company? Don't you know that?

A. That is correct.

Q. And hadn't Mr. Keeshin told you and your committee, and hadn't you found out in the course of your investigation of him, that he had never been in this business before?

A. Yes.

Q. So that isn't it a fact that there was bound to be some disruption of the service at the time it was giving up one service and taking up the other?

By Mr. Meserow: I object to the question; calls for a conclusion, your Honor.

By the Court: Objection sustained. He may answer yes or no.

By Mr. McConnell:

Q. Was there any disruption of service so far as you know?

A. I believe I previously testified, and I will testify again, to the fact that I never heard of any disruption in service.

A few minor situations arose that came to my 1478 knowledge that indicated that there had been some

difficulty in connection with differences in employees, one company as against the other.

Q. Didn't you get some complaints from the railroads that service wasn't being performed properly?

A. As I recall the situation, there was a meeting called after the operation was in effect for a short time, and I believe that that meeting was called at the request of the Keeshin operators to determine what, if any, improvement could be made in the service.

1479 Q. You didn't call any meeting at the request of any carrier?

A. It could have been the request of the carriers, yes, also.

Q. Well, before I go to that I want to go back to something else. You told us this morning that you filed a contract with the Interstate Commerce Commission, is that right?

A. Yes, sir.

Q. There was no rule that you had to file that contract with the Interstate Commerce Commission, was there?

A. In my knowledge of the operation, there is a possibility that we did not have to file, but there were others that felt that it should be filed, and in view of that situation and on request I filed the document with the Interstate Commerce Commission.

Q. Hadn't the Interstate Commerce Commission declined to take jurisdiction over this transfer business here in Chicago?

By Mr. Meserow: Your Honor, I object to this line of questioning as asking for legal conclusions. This man is not a lawyer.

By Mr. McConnell: He knows what happened.

1480 By the Court: He may answer.

By the Witness:

A. As I recall, some years back I appeared as a witness on behalf of Parmelee in a case in which the Interstate Commerce Commission was determining some subjects. I am rather vague on that right now.

By Mr. McConnell:

Q. Well, didn't they hold they had no jurisdiction over the transfer business?

A. I believe that they did.

Q. You know they did, don't you?

A. I said I believe that they did.

Q. Going back to the differences in service between the Parmelee people and the Keeshin, do you recall that Parmelee permitted the passenger, the railroad passenger, the use of his coupon to get from the railroad station down to the Loop?

A. Yes; I remember that Parmelee provided that service.

Q. And that service was not provided by Keeshin or his company, was it?

A. It was not.

Q. So that under the Keeshin handling of the transfer business, the passenger had to pay for a taxi cab ride or walk or use his own car, isn't that right?

1481

A. That is correct, I presume.

Q. Do you recall that there was an arrangement when Parmelee had this transfer business whereby passengers who got off at the Englewood Station were allowed to use their coupons for the full credit on the taxi cab fare?

A. I believe originally that Parmelee provided a service at the Englewood Station. The question, as you put it, I do not know.

Q. You don't know that they allowed, that they redeemed from the taxi cab companies the full face value of the coupon as applied on a taxi cab fare?

A. I do not know that. I think if I had I would have confronted Mr. Markin with that situation, because he turned us down on that same proposition at the other stations.

Q. Well, it was of some importance to the carriers, wasn't it, to have that sort of service at the Englewood Station?

A. I believe it would be.

Q. And that was not provided by Mr. Keeshin's company or Mr. Keeshin or anybody connected with Mr. Keeshin, isn't that right?

A. No, sir, it wasn't.

1482 Q. Did you ever make any investigation of the committee—did the committee make any investigation of Mr. Keeshin's financial responsibility?

A. As far as I personally was concerned, I did not. I thought that I had a little bit of background over a long period of years of his financial situation, and I believe the other carriers—and the carriers did, too.

Q. Had one of his companies, a freight line company, been in bankruptcy?

By Mr. Meserow: I object to that question, your Honor. There is no showing it was his company.

By the Witness: Pardon me, but I did not—

By the Court: Objection sustained.

By Mr. McConnell:

Q. All right. What is the pickup and delivery service that was given by the transfer company?

A. It is a service from the station of checked baggage to the home or hotels, from the home or hotels to the station in connection with traffic moving into and out of Chicago proper.

Q. Do you know what the rates were that were
1483 charged by the Keeshin Company?

By Mr. Thompson: We objection to this, first as

improper cross examination, and secondly, it has nothing to do with this contract.

By Mr. McConnell: It has something to do with the traveling public, I would say.

By the Court: Objection sustained.

By Mr. Thompson: Which has nothing to do with the contract.

By Mr. McConnell: It has to do with the rate which is charged the public, your Honor, for the use of the service.

By Mr. Thompson: No.

By the Court: Not on the contract.

By Mr. McConnell:

Q. It is in the contract, isn't it?

A. No, sir.

Q. Wasn't there a supplemental contract covering that?

A. No, sir.

Q. I will go on to something else while we are looking that up. Do you recall that the billings on the 1484 coupons were for fifteen-day billing by the Keeshin Company as compared with the thirty-day billing of the Parmelee Company?

By Mr. Thompson: We object to that as immaterial to any issue in this case.

By the Court: Read the question.

(Thereupon the record was read as above recorded.)

By the Court: Objection sustained.

By Mr. McConnell:

Q. How many employees—do you know how many employees the Parmelee Company had at the time they gave up their service?

By Mr. Thompson: I object as immaterial and improper cross examination.

By Mr. McConnell: He went into the service as to what was and whether it was adequate, whether it was proper,

and I am trying to show that we had more service than they did.

By the Court: He may answer.

By Mr. Thompson: The number of employees won't establish it. It was a lack of efficiency probably if
1485 they had to have more employees to do a better job or a poorer job.

By the Witness:

A. I do not know.

1486 By Mr. McConnell:

Q. Isn't it a fact that they had almost twice as many employees as the Keeshin group?

A. I don't know.

By Mr. Thompson: I object to that, as he said he didn't know.

By Mr. McConnell:

Q. I will show you a provision in the contract with the Keeshin company referring to baggage pickup and delivery service. Is that in the contract?

By Mr. Thompson: We object to any examination of the content of the contract. It isn't in evidence.

By Mr. McConnell: He said it wasn't in the contract. That is what he testified to, and I have called his attention to where it is.

By the Court: You say the contract is not in evidence?

By Mr. Thompson: The contract is not in evidence, and we object to examining the content of it.

By the Court: I will let him examine it.

By the Witness:

1487 A. There are two different areas here in which you were questioning me, I believe.

By Mr. McConnell:

Q. The question was—

By the Court: I don't think we ought to discuss the contents of the contract, if it is not in evidence. The only

question is, does it refresh your recollection? That is all.

By the Witness: This refreshes my recollection as to one portion of the question.

By the Court: What is the question?

By Mr. McConnell:

Q. Isn't it the fact there was a provision in there about baggage pickup?

A. There is a provision in here about baggage pickup and delivery service.

1488 By Mr. McConnell: I don't know why this isn't in evidence. I thought Judge Thompson was putting it in, but I guess he didn't. It is identified as Plaintiff's Exhibit.

By the Witness: There is nothing in there about price of pickup and delivery service.

By Mr. Thompson: I can't hear what he is saying.

By Mr. McConnell: I move to strike it out.

By the Court: It was in answer to your question.

By Mr. McConnell: I didn't ask him what was in the contract.

By the Court: You asked him if there was a pickup provision, and he said yes, but not as to price.

By Mr. McConnell: All right. I would like to offer this in evidence, so I can examine the witness on it, as Plaintiff's Exhibit 100.

By Mr. Thompson: No objection.

1489 By the Court: No objection, Judge?

By Mr. Thompson: No.

By the Court: It may be received. I thought it was in evidence, but I am satisfied—

By Mr. Thompson: This is the one they offered with the bobtail on it.

By the Court: I recall that, but I was under a misapprehension.

By Mr. Thompson: Now it is in for all purposes.

By the Court: It may go in.

(Thereupon the said document, so offered and received in evidence, was marked Plaintiff's Exhibit 100.)

By Mr. McConnell: I thought it was in once on a motion that was made.

By the Court: It is in now.

By Mr. McConnell: I will ask the reporter to mark this in evidence.

By Mr. Thompson: It is marked.

By Mr. McConnell: It isn't marked in evidence. I am asking that it be marked in evidence.

1490 By Mr. McConnell:

Q. Will you point out to us what provision has to do with the pickup service?

A. Item 9.

Q. Do you recall that there was a pickup service under the arrangements with the Parmelee Company on Sundays?

A. I do not recall that service was performed every day of the week.

By Mr. McConnell: Read the answer, please.

(Thereupon the record was read as above recorded.)

By Mr. McConnell:

Q. Do you recall that under the Keeshin arrangement there was no Sunday pickup?

A. I don't believe there is a Sunday pickup on the Keeshin service.

Q. And you don't know whether there was one under the Parmelee?

A. I do not.

Q. Do you recall that there is an arrangement of a

difference in rate in different zones on baggage delivery charges?

1491 A. Yes, I do. I believe there is a tariff filed on that, and I think that should speak for itself.

By Mr. McConnell: All right, I think it speaks for itself, and I will ask that this be marked for identification as Plaintiff's Exhibit 108, and this document as Plaintiff's Exhibit 109 for identification.

(Thereupon the said documents were marked Plaintiff's Exhibits 108 and 109 for identification.)

By Mr. McConnell:

Q. I show you a document which is marked for identification Plaintiff's Exhibit 108, which purports to be a trunk line central passenger regulation governing the through checking of baggage to stations on lines of the issuing and participating carriers for delivery to addresses at places named herein, and I ask you if you can tell us whether that is a correct statement of the tariff that you said would speak for itself?

By Mr. Thompson: We object to this as improper cross examination, No. 1; and, secondly, as having nothing

1492 to do with the contract arrangements between the contracting parties involved here.

By Mr. McConnell: This witness has been examined at length on whether or not the Keeshin service was better than the Parmelee service.

By the Court: Objection sustained.

By Mr. Thompson: That had to do only with the station-to-station transfer.

By the Court: Objection sustained.

1493 By Mr. McConnell:

Q. Perhaps I can get at it this way: Were these scheduled rates filed pursuant to the service to be performed under the contract with Keeshin?

A. I can't consider that the terms of the contract had anything to do with the rates that were filed either at the time of the initial contract or later.

Q. Well, I call your attention to this provision in the contract which is now in evidence. "Transfer—" That is Keeshin's company, isn't it?

A. That is right.

Q. (Reading):

> " . . . agrees to furnish and perform the following services hereinafter collectively referred to as baggage pickup and delivery service within the terminal area,"

and then there are listed a number of services which they are going to perform.

Now, are the services which are included in this contract the services for which this schedule is filed on rates?

A. It is.

By Mr. McConnell: I submit that it is proper, 1494 your Honor. It comes right within the agreement.

This is the service. The contract is silent on it and the price.

By the Court: What is the question?

By Mr. McConnell: I have forgotten what the phraseology of the last question was.

Read the question, please.

(Whereupon the question was read as follows:

> "I show you a document which is marked for identification Plaintiff's Exhibit 108, which purports to be a trunk line central passenger regulation governing the through checking of baggage to stations on lines of the issuing and participating carriers for delivery to address at places named herein, and ask you if you can tell us whether that is a correct state-

ment of the tariff that you said would speak for itself.")

By Mr. McConnell: I will withdraw the question.

By Mr. McConnell:

Q. Does that tariff schedule show the prices
1495 which were charged by Keeshin's company for the services which I have read to you or called your attention to in the contract?

By Mr. Thompson: If the Court please, this has nothing to do with station-to-station transfer. It is a wholly separate and distinct a service, and a service which is performed by private contract between the customer who wants dray service or transfer service and the trucking company. It has nothing to do with the station-to-station transfer.

By Mr. McConnell: It has to do with the subject matter of this contract.

By the Court: I will let the witness answer that question.

By the Witness: Will you please read the question again?

(Whereupon the question was read as above recorded.)

By the Witness:

A. The reason for it—this is going to be a lengthy answer.

By Mr. McConnell:

Q. It doesn't need to be lengthy.

1496 By Mr. McConnell: Read the question again. You can answer that very quickly.

By the Witness:

A. Not without an explanation of what is in the contract.

By Mr. McConnell:

Q. You answer the question, and then go ahead and make any explanation you want, but I would like an answer to my question, please.

A. I don't believe I can answer it in the way in which it was asked.

Q. All right. You can't answer it, is that right?

A. I don't believe I can answer it in the way it was asked.

By Mr. McConnell: I ask that this document be marked Plaintiff's Exhibit 110 for identification.

(Thereupon said document was marked as Plaintiff's Exhibit No. 110 for identification.)

By Mr. McConnell:

Q. I show you a document which has been marked for identification Plaintiff's Exhibit 110, which purports to be rules, regulations and rates governing the through
1497 checking of baggage issued by E. B. Padrick, agent, and ask you if you promulgated that, wrote it up and sent it out and put it into effect?

A. That was issued by my organization, yes, over my name.

1498 Q. Now what does that purport to be?

By Mr. Thompson: Just a moment, please. We object to the witness describing the document. It is marked, and it will speak for itself, if it is ever received in evidence.

By Mr. McConnell: He prepared it. I am asking what it purports to be. I am simply identifying it for the record, that is all.

By Mr. Thompson: It speaks for itself.

By the Court: He said it is his signature and he sent it around.

By Mr. McConnell: I am trying to see if it has anything to do with this matter before I offer it in evidence. He prepared it.

By the Court: He may answer if it had anything to do with this local situation.

By the Witness:

A. This is a tariff of rules and regulations and rates governing through checking of baggage from the addresses and placed named therein for delivery to stations on lines of the issuing and participating carriers 1499 shown therein.

Q. Were those rates that were put into effect under this Keeshin contract?

By Mr. Thompson: If the Court please, the transfer company, so far as anything indicated so far hasn't anything to do with it, and it has nothing to do with station-to-station transfer, which is all this contract covers. We object to it as improper cross examination and it is immaterial.

By the Court: What the witness says it covers, whether he does it now or on redirect, I can't anticipate it. I don't know anything about it. He may answer.

By the Witness: What was the question?

By Mr. McConnell: Read the question, please.

(Thereupon the record was read as above recorded.)

By the Witness:

A. The tariff shows it became effective October 20, 1955.

By Mr. McConnell:

1500 Q. And that was after the Keeshin contract went into effect, is it not?

A. That is true.

Q. Do you know whether those rates were different than the rates that were charged und the Parmelee contract?

By Mr. Thompson: If the Court please, that would prove nothing. Groceries are higher now than they were

in 1955. It proves nothing with respect to this litigation; has nothing to do with it. We object to the question.

By the Court: I will let him answer.

By the Witness:

A. Without having the comparisons in front of me at the present time, I would not be able to answer the question.

By Mr. McConnell:

Q. Now you had some discussion, I think you testified about in your direct, about the loading and unloading of baggage by the railroads under the Keeshin proposal?

A. No, I don't recall that I testified to the fact of the loading and unloading of baggage by the railroads.

1501 Q. Wasn't there a proposal made at one time that the railroads should load and unload baggage?

A. There was an alternate proposal made at one time with respect to that situation.

Q. And that was made by whom?

A. Mr. Keeshin.

Q. And the railroads objected to it?

A. The railroads did not accept the alternate proposal.

I think I must state in answer to that, as I did earlier today, however, that we did say to Mr. Keeshin that if he could negotiate with any of the stations that he was permitted to do so.

Q. It never went into effect, is that right?

A. No; I believe I testified this morning that in connection with that, that there were two stations, the arrangement for the handling of the baggage there by the station employees which did go into effect at the North Western Station and at the LaSalle Street Station for an amount that was paid by Mr. Keeshin.

Q. That was something that was negotiated by Mr. Keeshin after the acceptance by the committee of his proposal, was it not?

A. We understood at the time of the proposal
1502 that he was ready to handle the loading and unloading of baggage from the platform at the tailgate of his vehicles and onto the platforms at the tailgate of his vehicles at all stations.

Q. And that was changed, was it not, by at least two stations by some later negotiations?

A. By individual negotiations with the stations.

Q. Do you recall that Parmelee had a sorting place of their own for baggage?

A. I believe they did.

Q. Where was it, do you recall?

A. No, I do not recall specifically.

Q. Did Keeshin have any such place to sort baggage?

A. To my recollection he did.

Q. Where was it?

A. At the La Salle Street Station.

Q. He got that from the station?

A. I understand he did and paid rental on it.

By Mr. McConnell: Let me have those pictures.

Mark these photographs as Plaintiff's Exhibits 111, 112, 113, 114, 115 and 116, for identification.

1503 (Thereupon said photographs were marked, respectively, as Plaintiff's Exhibits Nos. 111, 112, 113, 114, 115 and 116 for identification.)

By Mr. McConnell:

Q. I show you pictures that are marked for identification as Plaintiff's Exhibits 111 to 116, inclusive, and ask you if you can identify these pictures as the equipment operated by Keeshin at least so far as passengers are concerned?

By Mr. Thompson: May I look at them?

By Mr. McConnell: You can look at them all you want to.

By Mr. Thompson: Good.

The question is, does he identify them, I guess.

By Mr. McConnell: Read the question.

(Whereupon the record was read as above recorded.)

1504 By Mr. Thompson: If the Court please, we object to the form of the question, as identifying these as pictures of the equipment operated by Keeshin, without fixing any period of time and without fixing any limitation to the question as to whether there was other equipment.

The equipment would include all the passenger equipment, I would assume, which is incorporated in the question, and secondly, there is no indication of what date he is talking about when these pictures were taken.

Of course, there has been no foundation laid to these pictures, but we are not to that point yet.

By the Court: The objections are well taken. Sustained.

By Mr. McConnell: Well, I am just asking if he can identify them as pictures of the equipment.

By Mr. McConnell:

Q. Can you identify them as pictures of any equipment that you have seen Keeshin using?

1505 A. These two pictures would seem to be to me taken at the same time of the same vehicle with the same passengers in them, and this is, to my knowledge, a type, one type of equipment that was provided by Keeshin. It is the station wagon type of equipment that we have talked about.

By Mr. Thompson: Will the Witness please identify the numbers of the documents to which he is referring?

By the Witness: This indicates it is Plaintiff's Exhibit No. 114, the one I have in my right hand, and this one

that I have in my left hand now is identified as Plaintiff's Exhibit No. 111.

By Mr. McConnell:

Q. All right. Now, can you identify those pictures, the numbers of which you referred to, as a station wagon that you talked about this morning in your direct examination?

A. It is the station wagon type of equipment that was used by Keeshin.

Q. All right.

A. It has no provision for loading of baggage on top, and from the pictures it would appear that the
1506 loading is to and from the rear, as I indicated.

Q. All right. Now, of those pictures can you pick out any pictures of the Volkswagens that you talked about this morning as being operated by Mr. Keeshin?

A. There are two pictures here of Volkswagens that appear to be taken at the same time, because it would appear that the same passengers are in the same seats, and the driver is in the same position in both of the pictures. The one I have in my right hand is Plaintiff's Exhibit No. 113, and the one I have in my left hand is Plaintiff's Exhibit No. 116, and they are, to my knowledge, the same type of Volkswagen that was used in the temporary operation that I spoke of in my testimony this morning, and again, these pictures do not show any provision for the handling of baggage on top.

Q. Well, was there any provision for the handling of baggage on top?

A. There was not.

Q. How long were these Volkswagens used?

A. My recollection is that they were used from late in October or early November, and the last one was out of usage, as I recall it, by the first of the year.

1507 Q. The Parmelee people used a seven-passenger limousine, didn't they?

1508 A. I believe that I testified before, and I do consider a difference between a 7-passenger limousine and a taxi cab, sir, and I would have to say that this was a taxi cab type of car that was operated by Parmelee; and I would not consider it to be a limousine.

Q. Well, where was its baggage stored?

A. To the extent of availability, it was stored in the back, in the trunk compartment, as we who drive an automobile would testify to, I believe, or at least I have to testify to that, and if there was an overage in connection with the baggage it was usually handled in the front seat alongside the driver.

I am talking about hand baggage now and not about checked baggage.

Q. I know what you are talking about is hand baggage, that you wouldn't have to open up and expose the interior of the automobile, whatever you want to call it, a taxi cab, a reformed taxi cab or a large taxi cab, that it didn't have to be opened up and exposed to the elements to put the baggage in it, did it?

A. It did not.

Q. And it did hold seven people?

A. Yes, counting two people on the driver's side, on the driver's seat.

1509 Q. And that was the type of equipment that had been used prior to the time of your statements of your committee people in the spring of 1955, that that was satisfactory, that the service was satisfactory?

A. The indications have been to that extent by some.

Q. Of your committee?

A. Some of the committee.

Q. Well, let me ask you this: You didn't indicate, you yourself indicate any dissatisfaction with Parmelee equipment to any railroad or to anybody at any time, did you?

A. I, personally?

Q. Yes.

A. I did not.

By the Court: This might be a nice time to say good-night to you folks, and have a pleasant evening and please don't discuss this case with anyone. I will see you tomorrow morning at 10:00 o'clock.

(And thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: 10:15, please.

1510 (Whereupon an adjournment was taken in the hearing of the above-entitled cause to the following day, Thursday, May 5, 1960, at the hour of 10:15 o'clock a.m.)

1511 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Thursday, May 5, 1960,
10:15 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh M. Cross;

1512 Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1513 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.
By the Court: Bring out the jury.

(Whereupon the following further proceedings were had herein in open court, in the presence and hearing of the jury:)

EARL B. PADRICK, called as a witness herein on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:
By the Court: All right, let's go to work.

Cross Examination (Resumed)

By Mr. McConnell: I will ask that these documents be marked Plaintiff's Exhibits 117 and 118, respectively, for identification.

(Thereupon said documents were marked, respectively, as Plaintiff's Exhibits Nos. 117 and 118 for identification.)

1514 By Mr. McConnell:

Q. Mr. Padrick, I show you a document which has been marked for identification Plaintiff's Exhibit 117, which purports to be a letter on the letterhead of the Erie

Railroad Company, under date of May 22, 1956, from Mr. R. E. Towns, assistant general passenger agent, addressed to you as chairman of the Western Passenger Association.

I ask you whether or not you received that letter through the mails at or about the date that it bears.

A. Yes, I received that letter.

Q. I show you a document which is marked for identification Plaintiff's Exhibit 118, which purports to be a notice of some kind under date of February 20, 1956, typed in your name and Mr. A. J. Winkler, and ask you whether or not you promulgated that or sent it out to the parties to whom it is addressed.

A. I did.

Q. Now going ba[illegible] to Plaintiff's Exhibit 117, who is Mr. R. E. Towns?

A. General passenger agent of the Erie Railroad, Chicago.

Q. Can you identify his signature on this?

1515 A. I cannot identify his signature, no.

Q. Did you have a chance to read that letter when I showed it to you or did you look at it?

A. I scanned through it. I didn't read it thoroughly.

Q. I call your attention to the letter marked A-225. Do you recall that that letter was produced out of your files, the Association files?

A. Yes, those were the numbers that were used out of our files, and we received this letter on May 23. This is our dater stamp. It was received in our office.

1516 Q. I call your attention to the next to the last paragraph of that letter, and ask you to read it to yourself, not to anybody else.

A. Yes, this has to do with the pickup and delivery service.

By Mr. Thompson: Just a moment. He hasn't asked you any question.

By the Witness: Pardon me.

By Mr. Thompson: He has just called your attention to a paragraph of the letter.

By Mr. McConnell: Now I will ask the question.

By Mr. McConnell:

Q. Does that refresh your recollection that one of the railroads, at least, of your association was complaining about the service rendered by Keeshin's company.

A. Pickup and delivery service—

By Mr. Thompson: Wait a minute.

By Mr. McConnell: I don't know what that gesture was about. I asked a question.

By Mr. Thompson: May I have a chance to take
1517 a look at this document before you proceed further with cross examination.

By the Court: You may, Judge Thompson.

By Mr. Thompson: We object to any cross examination on this document. It has nothing to do with the interstation transfer service which is the subject matter of this litigation. The subject matter of the document is immaterial to any issue in this case, and certainly to the issue we are trying.

By the Court: If the witness will so state, I will sustain the objection. But he has to state what it is so you can question him whether it is or is not part of the contract.

By Mr. McConnell: I asked him a question whether it refreshes his recollection. He can answer that yes or no.

By the Court: Yes, he may answer.

By the Witness:

A. Yes, it refreshes my recollection.

By Mr. McConnell:

Q. All right. I will ask you this: The Erie Railroad was a member of your association, wasn't it?

A. It was one of the Chicago Terminal Lines.

1518 Q. Yes, that was one that you were acting as chairman for?

A. I did act as chairman for these meetings, yes.

1519 Q. Was the Erie Railroad complaining about the way the Keeshin company was picking up baggage in the transfer service?

By Mr. Thompson: We object to this inquiry as having nothing to do with interstation transfer. This is a matter apart from that.

By the Court: If it pertains to some subject matter under the contract, he may answer. If it doesn't, he may state so.

By the Witness:

A. This has to do with the pickup and delivery service from homes to trains in the City of Chicago.

By Mr. McConnell:

Q. That was covered by your contract, wasn't it?

A. I don't consider that it was.

Q. Wasn't that service that was rendered by Parmelee when it had this transfer business?

A. Parmelee did render this service but separate and apart from the railroad transfer service.

Q. Well, it was part of the service they were rendering for the railroads and for this segment of commerce, wasn't it?

A. They were not the only ones rendering this service.

1520 Q. I didn't ask you that.

By Mr. McConnell: Read the question.

(Thereupon the record was read as above recorded.)

By the Witness:

A. I consider they were rendering that particular service for themselves.

By Mr. McConnell:

Q. I call your attention to this statement in Mr. Towns' letter to you.

By Mr. Thompson: We object to reading any part of this document.

By the Court: Objection sustained.

By Mr. McConnell: I offer the document in evidence.

By Mr. Thompson: We object to the receipt of the document in evidence as being immaterial to any issue in this case, and improper to be offered on cross examination.

By the Court: Objection sustained, for other reasons. No proper foundation is laid, and he doesn't know the signature. It was in his file, and it pertains to somebody else, what somebody else is thinking or saying.

1521 By Mr. McConnell: He is telling us whether or not there were complaints.

By the Court: He can answer the question whether the letter refreshes his recollection, but what the document says is inadmissible and the objection is sustained.

By Mr. McConnell:

Q. Does this letter refresh your recollection that the Erie Railroad was complaining that the services which were rendered by Railroad Transfer didn't equal the service rendered by Parmelee?

By Mr. Thompson: We object to that.

By the Witness:

A. I cannot say that.

By Mr. McConnell:

Q. Well, will you look at the letter again?

A. The letter doesn't say that.

1522 Q. I call your attention to the next to the last paragraph of the letter.

A. Under the circumstances I would like to call your attention to the question that you asked me. You said

"services" and I maintain that this letter pertains only to one type of service that was rendered by Railroad Transfer, and that is the pickup and delivery service and has nothing to do with the station-to-station transfer service.

Q. Well, let me give you a new question, and I will accept your modification. Does that refresh your recollection that a service which was being performed by Parmelee according to one of your constituent railroads wasn't being performed by Keeshin's company?

By Mr. Thompson: We object to that as improper cross examination.

By the Court: The objection is sustained. He has answered it several times.

By Mr. McConnell: I thought, your Honor, that the narrow issue we were trying here was whether or not—

By the Court: I think he has answered it. Have you answered it, Mr. Witness?

By the Witness: I think I have, sir.

1523 By Mr. McConnell: I have no further questions of this witness, except I want to make an offer of proof on this outside the presence of the jury.

By the Court: Any redirect, Judge?

By Mr. Thompson: Yes, but I don't know whether they have finished.

By Mr. McConnell: I say I have an offer of proof to make, your Honor, outside the presence of the jury on these documents.

By the Court: Very well. Do you want to proceed, Judge Thompson, before he makes the offer of proof or after?

By Mr. Thompson: Yes.

By the Court: Now?

By Mr. Thompson: Yes.

By the Court: All right.

Redirect Examination by Mr. Thompson.

Q. Mr. Padrick, on this subject which has just been the subject of inquiry, did the railroads have anything to do with the schedule of prices that the Parmelee
1524 Transportation Company charged folks for picking up and delivering baggage?

A. No, sir.

Q. Did they have anything to do with the prices that the Railroad Transfer Service Company charges?

A. No, sir.

Q. Have these prices varied from time to time in accordance with costs and other economic matters?

A. Yes, they have varied from time to time.

Q. No different since the Railroad Transfer has taken over than when Parmelee Transportation Company was handling it?

By Mr. McConnell: I object to that.

By the Court: Yes, objection sustained.

By Mr. Thompson:

Q. Getting to this subject of the military charge, you said that back during the war there was a special rate paid by the Parmelee Transportation Company for transferring furloughees who were passing through Chicago on a through ticket. Was there also a special charge or special rate by the railroads for the through tickets for these furloughees?

A. A specially reduced rate, sir.

Q. So that the transfer coupon was reduced in relation to the whole ticket charge?

1525 A. It was reduced in connection with that.

Q. As to the military man, that is those whose transportation was being paid by the Government, was there a special fare for that?

A. A ten-percent reduction to the Government by the railroads.

Q. During that period prior to 1948, that is, during the war period from 1942 to 1948, the transfer charge for passengers was 85 cents, wasn't it?

A. That is correct.

1526 Q. Even prior to 1942 it was 75 cents?

A. That is right.

Q. Was the coupon charge that Parmelee was collecting during this period for transferring the passengers who were military men on these military tickets the same as it was for other passengers?

A. It was.

Q. And is the Railroad Transfer Service Company now transferring military personnel for 85 cents?

A. Not military personnel as such. They are furlough personnel for 85 cents.

Q. Getting to this matter of whether a profit and loss statement was furnished as requested by the Parmelee Transportation people, I think you said the representation was made that the reason it was not forthcoming was because it was not available from the way they kept their consolidated accounts of the various companies.

Did Parmelee nevertheless represent to the railroads that it was losing money on this whole transportation situation?

A. It did.

Q. Was it for that reason that you asked for the profit and loss statement?

1527 A. It was.

Q. Getting to another subject which was covered in cross examination, and that is this purpose of the transfer service here, among other things, and the unique situation we face in Chicago, if a passenger traveling from New York to San Francisco on a through ticket chooses a route across the country, does his ticket cost him the same whether he chooses the route out of New York on

the New York Central or the Erie or the Pennsylvania and out of Chicago on to San Francisco on the Burlington, the Union Pacific or the Santa Fe?

A. On the New York Central and the Pennsylvania, the fare is equalized. On the routes of the Erie and the D&LW, they have been considered routes that are differential routes because of a longer time, and they have always had a differential, but the rates on those two lines are also equalized.

1528 Q. Well, all right, then, to get out of the special situation. The fare through Chicago from New York to San Francisco on the Class I railroads is the same, whatever route the passenger chooses?

A. That is right.

Q. Who chooses the route?

A. The passenger.

Q. And incorporated in all those through tickets is this transfer coupon?

A. It is.

Q. So that if the passenger coming through Chicago to San Francisco on the Pennsylvania goes out on the Burlington, he arrives and departs from the Union Station?

A. That is correct.

Q. And if he comes in on the New York Central and goes out on the Santa Fe, he has to transfer from the LaSalle Street station to the Dearborn station?

A. That is correct.

Q. But the passenger gets the benefit of that coupon, and therefore his fare is the same?

A. The passenger gets the benefit of the coupon free of charge.

Q. What about the interval between the arrival
1529 of some of the trains and the departure of outgoing trains where this transfer must be made. Are some of them close?

A. Some are close; some are very close.

Q. What about the railroad's attitude toward providing this service for its passengers, this transfer service, with respect to whether this special service is needed for that purpose?

A. It has always been the thought of the carriers, as far as I know, that the transfer service was necessary to provide for special or short connections and any connections as far as that part of it is concerned.

Q. Is there any other competition, transportation competition with the railroads, other than among themselves?

A. There certainly is.

Q. And what is that?

A. Airlines, bus lines.

Q. Now there was some suggestion made with respect to the handling of corpses. Do you know whether there has been any change in the service of handling a corpse between the service formerly rendered prior to October 1, 1945, and that currently rendered?

1530 A. Yes, there has been a change.

Q. What is the change?

A. A couple of specially built wagons, station wagons were built—I won't say were built—there were at least two station wagons modified for the purpose of handling corpses exclusively.

Q. And has that improved the service of dispatching—

By Mr. McConnell: I think that is a jury question, whether it has or hasn't.

By the Court: He may answer.

By the Witness:

A. I think it is a better transfer. It leaves a better relationship with the public than the handling of corpses in trucks.

By Mr. Thompson:

Q. Is that important to the relations between the public and its passengers?

A. The railroads have thought so.

By Mr. McConnell: I have to strike out what the railroads thought.

By the Witness: I think so.

By Mr. Thompson: The railroads are the ones that are buying the service, your Honor.

By the Court: Objection sustained as to what
1531 the railroads thought. His answer may stand as to what he thinks.

By Mr. Thompson:

Q. Do you know, Mr. Padrick, whether it is a fact that prior to October 1, 1955, there were others than the Parmelee Transportation Company providing private pickup and delivery service?

A. Any drayage firm can provide, any drayage firm in the district could provide pickup and delivery service to the stations.

Q. Were they, as a matter of fact, do you know?

A. Yes.

Q. And is it true today that that is still open to anybody that wants to go into the business?

A. It is.

Q. And do other drayage people as a matter of fact perform pickup and delivery service for customers to your knowledge?

A. Yes, and I am quite sure for a long period of time Parmelee provided that type of service, particularly for the boys and girls' camps.

Q. That was subsequent, you mean, to October 1, 1955, after the Keeshin group took over?

A. That is right.

1532 By Mr. Thompson: I think that is all.

My associates think there is a question not yet answered.

By Mr. Thompson:

Q. Did this furloughee rate of 85 cents for the transferring go into effect prior to the changeover of this service?

A. It did.

Q. So that Parmelee Transportation Company and the Railroad Transfer Service, Inc., are charging the same as far as this transfer rate is concerned of 85 cents?

A. Exactly the same.

By Mr. Thompson: That is all.

1533 *Recross Examination by Mr. McConnell.*

Q. You draw a distinction between furloughees and regular military personnel. What is the charge to them for coupons?

A. Regular miltary personnel?

Q. Yes, not furloughees.

A. The regular rate, same as for the—

Q. As for a civilian?

A. A civilian, yes, sir.

Q. Now this profit and loss statement you were asked about, you never had a contract with Parmelee company which compelled them to furnish you a profit and loss statement or give you access to their books and records, did you?

A. No, sir.

By Mr. McConnell: All right. I have no further questions.

By Mr. Thompson: That is all.

(Witness excused.)

By Mr. Thompson: If the Court please, we desire to read a small part, a score or so of questions and answers from the testimony taken before trial of Morris Markin,

who is or has been at various times an officer and
1534 director of plaintiff, and recall him under the rule as a witness adverse to the defendants.

I shall read only the questions that I think—

By Mr. McConnell: Will you tell us where you are reading?

By Mr. Thompson: (Continuing) —that we think are pertinent to the issues.

By the Court: I didn't hear you, Mr. McConnell.

By Mr. McConnell: I want to find out where he is reading so we can follow along.

By the Court: Yes.

By Mr. Thompson: I was going to call the pages.

By Mr. Freeman: We don't have a copy.

By Mr. Tone: I have a copy.

By Mr. Thompson: Let him have yours. You don't need to watch me.

The examination—

By Mr. Freeman: What page?

By Mr. Thompson: Page 1.

MORRIS MARKIN, called as a witness herein on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

1535 By Mr. Thompson: (Reading)

"Q. Will you state your name, please?

A. Morris Markin.

Q. What is your address?

A. 5333 North Westnege, Kalamazoo, Michigan.

Q. Where is your principal business address, Mr. Markin?

A. Kalamazoo, Michigan.

Q. And the street?

A. North Pitcher Street.

Q. And do you have a Chicago business address?

A. Yes.

Q. What is that?

A. I stay at the Blackstone Hotel.

Q. Is that what you call your Chicago business address?

A. No, I am sorry, Mr. Thompson. The business address would be--actually, I attend to many businesses here in Chicago, so I could be at the Yellow Cab or I would be at DesPlaines Street, Parmelee.

Q. Well, all right. The business address of the plaintiff, Parmelee Transportation Company, Inc., is what?

A. 300 North DesPlaines."

1536 By Mr. Thompson: Then I pass to page 9.

By Mr. Thompson: (Reading)

"Q. Now who were the principal stockholders in the newly organized Parmelee Transportation Company, Inc., plaintiff in this case, when it was organized in 1929?

A. Well, that was organized by a syndicate of bankers, and the stockholders were numerous. It was underwritten by bankers in New York?

By Mr. Thompson: Skipping some questions.

By Mr. Thompson: (Reading)

"Q. What was your business at the time of this organization in 1929?

A. I was interested in steel, as in the building of cabs, manufacturing automobiles, put in that way.

Q. And what was the name of the company?

A. At that time it was Checker Cab Manufacturing Corporation. The name has been changed today to Checker Motor Corporation."

1537 By Mr. Thompson: At Page 13:

"Q. Well, Parmelee Transportation Company, Inc., the plaintiff here, is a company with a number of subsidiaries?

A. That is right.

Q. But who owns Parmelee?

A. Parmelee is owned by Checker. I mean, the majority is owned by Checker Cab Manufacturing Corporation.

Q. And who owns the Checker Manufacturing Corporation?

A. Stockholders and myself.

Q. Well, what is the Checker Taxi Company, Inc.?

A. Checker Taxi Company, Inc., is an operating company in the City of Chicago.

Q. Does it actually operate the Checker taxicabs?

A. It does.

Q. And what part of that company do you own?"

By Mr. Thompson: Skipping the interruption:

"A. I believe I own most of it with the exception of a very small minority.

Q. Well, now, does Checker Taxi Company, Inc., own a part of this one we have been talking about, Check-1538 er Cab Manufacturing Company of Kalamazoo?

A. It does."

By Mr. Thompson: Then next Page 15:

By Mr. Thompson: (Reading)

"Q. Now then, we are coming to the plaintiff in this case, down this ladder. You say the plaintiff, Parmelee Transportation Company, Inc., is owned at least in part by Checker Cab Manufacturing Company of Kalamazoo, is that right?"

By Mr. Thompson: Then the answer comes below there:

By Mr. Thompson: (Reading)

"A. Today Checker Motors Corporation owns about 65 or 68 percent of the Parmelee stock."

By Mr. Thompson: Then at Page 16, bottom of the page:

By Mr. Thompson: (Reading)

"Q. Now, Parmelee Transportation Company, as you said a moment ago, owns some companies, among them Chicago Yellow Cab Company, Inc., doesn't it?

A. They have holdings in them. They don't own Chicago Yellow Cab. They have a percentage of—

Q. Do you know how large a percentage? Does Parmelee own a controlling interest in Yellow Cab or not,
1539 Chicago Yellow, I mean.

A. I think around 47 or 48 percent, something like that,"

By Mr. Thompson: Then the next Page 18:

By Mr. Thompson: (Reading)

"Q. Now Chicago Yellow Cab Company is a holding company?

A. Yes.

Q. And it doesn't operate the cabs in Chicago?

A. It does not.

Q. What company operates the Yellow cabs in Chicago?

A. I would say the Yellow Cab Company of Chicago."

By Mr. Thompson: The next page:

By Mr. Thompson: (Reading)

"Q. Do you have an office in Checker Taxi Company, Inc., at Chicago?

A. I used to have it, but not now any more.

Q. And do you have an office in Checker Motors Corporation, Kalamazoo?

A. I do.

Q. What is your present position there?

A. I am president of the company.

Q. And do you have an office in Parmelee Transportation Company, Inc.?

1540 A. Well, I use the offices in either one of these companies. Let us put it that way. I don't have a special office there.

Q. What is the official position?

A. In Parmelee?

Q. Yes.

A. I am president of the company. I am sorry, I am chairman of the board. I was a little bit confused."

1541 By Mr. Thompson: Page 21.

By Mr. Thompson: (Reading)

"Q. Now, Parmelee also owns Continental Air Transport Company in Chicago, doesn't it?

A. It does.

Q. And the National Transportation Company of New York, that is also a subsidiary of Parmelee, isn't it?

A. That is correct.

Q. Does that company operate only in New York?

A. Only in New York.

Q. Just taxis in New York?

A. Yes, sir."

By Mr. Thompson: The next page, at the bottom of the page.

By Mr. Thompson: (Reading)

"Q. Now, the Yellow Taxi Company of Minneapolis is apparently another subsidiary of Parmelee Transportation Company, Inc.?

A. That is correct."

By Mr. Thompson: And then further down:

By Mr. Thompson: (Reading)

"Q. And the Yellow Cab Company of Pittsburgh, that actually operates cabs in Pittsburgh, I assume?

A. That is right.

1542 Q. Now the Airline Transportation Company of Pittsburgh, that is another subsidiary of Parmelee Transportation, apparently?

A. That is right."

By Mr. Thompson: At the bottom of page 24:

By Mr. Thompson: (Reading)

"Q. Are you on the board of directors of Parmelee Transportation Company, Inc.?

A. I am."

By Mr. Thompson: Page 30, the bottom of the page.

By Mr. Thompson: (Reading)

"Q. Now, this Transportation Maintenance Corporation of Chicago, you are familiar with that company, I suppose?

A. I am familiar with most of the operations here."

By Mr. Thompson: The next page.

By Mr. Thompson: (Reading)

"Q. Aren't you chairman of that company, too?

A. No, the Chicago Maintenance Corporation is a company established for the two cab operations, a joint company."

By Mr. Freeman: Read the rest of that answer.

1543 By Mr. Thompson: The answer down further—

By Mr. Thompson: (Reading)

"A. . . . . the stock belongs to Yellow and Checker Taxi."

By Mr. McConnell: You didn't read the answer on page 31.

By Mr. Thompson: If you want me to read all that chit chat, I will. It won't take but a minute.

By Mr. McConnell: Most of it you have read so far is chit chat, and a little more won't hurt.

By Mr. Thompson: (Reading)

"Q. Aren't you chairman of that company, too?

A. No, the Chicago Maintenance Corporation is the company established for the two cab operations, a joint company. It is a non-profit company.

Q. Non-profit?

A. That is right.

Q. A charitable organization?

A. If you please, now let me put it my way, not in a legal way.

Q. All right.

A. The stock belongs to Yellow and Checker Taxi."

1544 By Mr. Thompson: Does that suit you? Page 34.

By Mr. Thompson: (Reading)

"Q. General Fire and Casualty Company, who owns that?

A. That is owned by Parmelee, Yellow Cab Company and Checker Taxi.

Q. Are you an officer of that?

A. I am chairman of the board of that."

By Mr. Thompson: The next page.

By Mr. Thompson: (Reading)

"Q. Well, does General Fire and Casualty furnish the insurance for the Parmelee Transportation Company's subsidiaries that I have mentioned?

A. It does in casualty."

By Mr. Thompson: Page 37:

By Mr. McConnell: Why don't you read the answers? I don't think they amount to anything, but if you are going to read an answer, read an answer. You only read one sentence in the answer.

By Mr. Thompson: You mean that there is some part you want that I have not read?

By Mr. McConnell: I don't care what you read, except read it all when you read an answer. When you read

1545 an answer, read an answer.

By Mr. Thompson: (Reading)

"A. It does in casualty."

By Mr. Thompson: That is the total answer.

By Mr. McConnell: All right.

By Mr. Thompson: Page 37:
By Mr. Thompson: (Reading)

"Q. This Checker Motors Corporation, formerly the Checker Cab Manufacturing Company of Kalamazoo, makes special purpose motor vehicles, doesn't it?

A. It does."

By Mr. Thompson: At the bottom of Page 38:
By Mr. Thompson: (Reading)

"Q. But over the period of the past ten years, let us say, did Checker Motors supply Parmelee subsidiaries with its cabs?

A. It did.

Q. And did Checker Motors Corporation or its predecessor in name supply the limousines which Parmelee used in its interstation transfer business here in Chicago?

A. You are talking about the large limousines?

1546 Q. Yes.

A. It did.

Q. You supplied all the passenger vehicles that were used in that local transfer business?

A. That is right."

By Mr. Thompson: Page 51 at the bottom of the page:
By Mr. Thompson: (Reading)

"Q. Benzoline Motor Fuel Company of Chicago, that is owned one hundred percent by Chicago Yellow Cab Company, Incorporated, isn't it?

A. That is right.

Q. Does that company sell motor fuels to Parmelee Transportation Company?

A. It does."

By Mr. Thompson: A little further down on Page 52:
By Mr. Thompson: (Reading)

"Q. How long has Parmelee owned Yellow Cab?

A. Since 1929."

(Witness excused.)

By Mr. Thompson: That is all we will read from that deposition.

By Mr. McConnell: If the Court please, under the
1547 rules the editing of a deposition is all right, but we have the right also to read parts which are connected with what has been read.

By the Court: I think you have, relevant parts.

By Mr. McConnell: And I think we will reserve that right to our side of the case.

By the Court: You have a right to do it.

By Mr. Thompson: Mr. Whittington.

1548 JOHN F. WHITTINGTON, called as a witness herein on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Will you state your name, please?

A. John F. Whittington.

Q. And your residence address?

A. Baltimore, Maryland.

Q. And your business address?

A. Baltimore, Maryland.

Q. With what company are you connected?

A. General passenger traffic manager of the Baltimore and Ohio Railroad.

Q. How long have you been employed by the Baltimore and Ohio Railroad?

A. 48 years.

Q. How long have you been stationed in Philadelphia, or rather, Baltimore?

A. 14 years, going on 15 years.

Q. Were you formerly stationed in Chicago?

A. In Chicago from 1941 to 1946 as passenger traffic manager.

1549 Q. You are familiar with the interstation transfer service that has been in vogue in Chicago for a number of years?

A. I am.

Q. During your residence in Chicago, your business location in Chicago, did you have some over-all connection with this interstation transfer service?

A. Being passenger traffic manager in Chicago, it was my responsibility to look after the transfer of passengers at the Grand Central Station.

Q. Since you have gone to Baltimore what is your connection with the passenger service here in Chicago?

A. I have complete jurisdiction over it through Mr. Coleman, our passenger traffic manager here in Chicago.

Q. Who is Mr. Coleman's assistant?

A. Mr. Nelson.

Q. Stanley Nelson?

A. That is correct.

Q. How frequently do you come to Chicago in the course of your duties, Mr. Whittington?

A. At least once a month, possibly twice a month and occasionally three times a month.

1550 Q. Did you have some general knowledge, at least over-all knowledge, of the conditions existing in Chicaog with respect to this interstation transfer service, let us say at the beginning of 1954?

A. I did, yes, sir.

Q. Did you know of the action which resulted in the appointment of a committee of the Chicago Terminal Lines?

A. I did, yes, sir.

Q. Did you know that the Baltimore and Ohio was selected as the representative of the Grand Central Station on that committee?

A. Yes, sir.

Q. Did you follow to a degree the negotiations that went on in 1954 and 1955?

A. I became very much interested in 1954 after we received a proposal from the Keeshin company that they were interested in performing the service. Up until that time we had not received any definite proposals from anyone.

Q. What was the situation, if you know, that prompted the action of appointing this committee in the early part of 1954?

A. Well, I would have to go back to the time I was
1551 located here. It was the constant increases that the Parmelee people were asking the railroads to provide, and when I was located here I endeavored, through every source I knew, including many times talking to Mr. Markin direct, that he give us proof that he was entitled to increases that he wanted.

Mr. Markin said it was impossible to do it and he wouldn't do it, and at no time could I ever persuade him or anyone.

1552 His former president, Mr. Landman, former president now deceased, a personal friend of mine, former passenger traffic manager of the New York Central—I interceded with him to try to get a statement from Parmelee to show whether or not he was making money or losing money on the operation in Chicago. I never could succeed.

Q. In 1954 do you recall whether there was pending at the beginnning of the year a request for an increase?

A. I think the rate went, was going to $1.22, but at that time it was either $1.20 or $1.22, and I don't recall the exact amount, but I did receive some statement indicating that Parmelee intended, if traffic went down, that the rate would possibly go to a rate of $1.50 per passenger.

I think it was predicated upon the number of passengers that were transferred—

By Mr. McConnell: I object to that. If there is a statement, that would be the best evidence.

By Mr. Thompson:

Q. I direct your attention, Mr. Whittington, to a document in evidence as Plaintiff's Exhibit No. 5.

1553 By Mr. Thompson: Is that Plaintiff's Exhibit No. 5?

By Mr. McConnell: Defendant's Exhibit.

By Mr. Thompson: It is marked as a plaintiff's exhibit. It should be defendants'.

By Mr. McConnell: Just mark it. That will be enough.

By Mr. Thompson: Thank you for your helpful suggestion.

By Mr. Thompson:

Q. I direct your attention to Defendants' Exhibit No. 5 that is in evidence, and ask you if that document was brought to your attention during this period of 1954.

A. Yes, that came to me. My name is on it as having been a recipient.

Q. I direct your attention, to save time, to the Schedule 3, which consists of Pages 1 and 2. Is that the schedule to which you are referring as to this advance to $1.50 of cost per coupon, if the passenger traffic falls down to a certain number?

A. Yes, sir.

Q. And that came to your attention about the date of the document or the proceedings, did it, which is

1554 some time in March or April—

A. April 7, 1954.

Q. That is the date of the proceedings?

A. Yes, sir; that is the date it was sent out jointly by Mr. Arnold and Mr. Padrick.

Q. Which of those associations is the Baltimore and Ohio a member of?

A. A member of both, that is the Eastern Trunk Lines and the Central Passenger Association.

Q. But not of the Western Passenger Association?

A. No.

Q. Mr. Winkler was the man who represented your association?

A. That is correct.

1555 Q. What did you know about the functioning of this Committee of Six, as they call it, during the spring of 1954? What did it do, and so on?

A. I knew that the committee was endeavoring to interest the other companies in performing the transfer service in Chicago. I don't recall all of them, but there was an express company, and even the Gray Line and Willett. I can't recall them all, but including Parmelee people, of course, who would be asked to do the same thing.

Q. Was this subject of settlement of the request for an increase effective retroactively to January 1, 1954 finally adjusted in the spring of 1954?

A. If I recall, that adjustment was made on a three-month basis when the rate from $1.05 went to $1.07 and $1.12½, and the railroads paid retroactive pay I think of some $40,000 claimed loss because of the operation of Parmelee.

Q. And then there was also a fare fixed, do you recall, from April 1 to June 30, 1954?

A. I think it was. I think it was $1.20. I am not sure of the exact amount.

Q. All right, $1.20, and then do you know how the fare was or the coupon value was to be determined
1556 after July 1, according to that settlement that was made in April of 1954? Do you recall that? Do you recall what the escalator clause was, if any?

A. No, I can't recall that, sir.

Q. All right. Did you come to Chicago and attend any of these meetings of this sub-committee of six railroads during the year of 1954?

A. No, sir, I did not.

Q. Were you kept advised by your local representatives, Mr. Coleman and Mr. Nelson, or one or the other of them, of what went on during 1954?

A. I was, sir. Not necessarily by letter, but I was with conversation with them where I would ask them what went on.

Q. With whom did you discuss these things when you would come to Chicago, principally?

A. Mr. Coleman.

Q. Mr. Coleman was the senior of Mr. Nelson?

A. That is correct, sir.

Q. Were you advised when these bids began to come in from those interested in furnishing bids?

A. In December, I think it was, I received the first written bid, and that was the Keeshin bid.

Q. Did you read that bid at the time?

1557 A. I analyzed it very closely, sir, yes.

Q. I direct your attention to Defendants' Exhibit No. 19, in evidence, and ask you whether or not that appears to be the bid that came to your attention.

By the Court: I think I will give the jurors a ten-minute recess while he is examining it.

(Whereupon a brief recess was taken, after which the following further proceedings were had herein:)

1558 By the Court: All right; bring out the jury.

(Whereupon in the presence and hearing of the jury the following proceedings were had:)

By Mr. Thompson: Do I have a pending question?

(Thereupon the record was read as above recorded.)

By the Witness:

A. It does.

By Mr. Thompson:

Q. And did you review this Keeshin bid when you received it in December 1954?

A. I did, yes, sir.

Q. Was there brought to your attention a month later this correspondence with Mr. Keeshin which modified the contract, that is, the letter of January 15, 1955, which is in evidence as Defendants' Exhibit 20?

A. Yes, it did, sir.

Q. And you noted the content of that modification of the bid?

A. Yes, sir, I did.

1559 Q. Now at the time, or do you recall what the bid that was made by Mr. Keeshin in December for the first year of the service, what the cost of the coupon would be?

A. On the contract?

Q. Yes.

A. On his contract, the first year of the service that he proposed was $1.20.

Q. What was being paid to the Parmelee people at that time for this coupon?

A. $1.22.

Q. And on the 15th of January when Mr. Keeshin modified his proposal, did he fix ceilings on other than the first year?

A. He put ceilings on the $1.22 for the second year, $1.23 for the third year.

Q. What was the basis for his being able to do that, if you recall?

A. His subsequent letter indicated that he had signed a contract with his union for three years, and therefore he could guarantee the rate of $1.20, $1.22 and $1.23.

Q. How long after you had these two Keeshin bids before you received the Parmelee bid?

1560 A. I think it was some time in March we got the Parmelee bid. I wouldn't know the date.

Q. Is this document which is in evidence as Defendants' Exhibit 21 the Parmelee bid?

A. This is the Parmelee bid that I received, yes, sir.

Q. What is the bid there for the first year?

A. He proposed that he would start at $1.20.

Q. Did he put any ceiling on the second and third years?

A. That was the difficulty. He said that on the second year that the rate would increase one cent for each three cents increase that he would have to grant for wages to any agreement he might have with the union.

Q. Was there any other escalator clause in the March 15 proposal of Parmelee that you remember?

A. The other was that he wanted the railroads to agree to a rate after $1.20 whereby, if traffic went down one percent, that the rate would go up one cent, and if traffic went up one percent, the rate would go down one percent.

Q. One cent, you mean?

A. One cent, I mean: I am sorry.

1561 Q. Well, from the experience of the railroads over the number of years, was there any likelihood that transfers were going up?

A. Not as far as I could visualize after all those years, no.

Q. What was the experience with the passenger volume over the period following the war, let us say?

A. The loss to the railroads of this country over the

period—I don't know the exact figures—but I think it got up as high as seven hundred million dollars.

Q. I mean as to whether or not traffic was falling off, passenger traffic.

A. That was the reason, sir. The traffic was continuing to fall off. On our railroad alone, we discontinued in a fifteen-year period, over a hundred twenty passenger trains because the passengers left the railroad.

Q. Did you attend the March 17 discussion between Parmelee and the railroad committee?

A. I did not.

1562 Q. Did you subsequently receive a supplement or amplification of Mr. Keeshin's proposal on April 6, 1955, which is in evidence as Defendants' Exhibit 22?

A. Yes, I did.

Q. And subsequent to this April 6th letter and prior to May 19, do you recall whether there was any further communication from either Keeshin or Parmelee or Markin?

A. Not that came to my attention.

By Mr. Thompson: I will ask that this document be marked Defendants' Exhibit 28 for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 28 for identification.)

By Mr. Thompson:

Q. I show you Defendants' Exhibit 28 for identification, and inquire whether you received that letter in due course of mail?

A. Yes, I did.

By Mr. Thompson: We offer the letter in evidence as Defendants' Exhibit 28.

By Mr. McConnell: I have no objection to the 1563 letter.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked as Defendants' Exhibit No. 28.)

By Mr. Thompson:

Q. The letter bears date of May 5, 1955?

A. Yes, sir.

Q. And it invites you to attend the May 19 meeting of the local committee?

A. That is correct, sir.

Q. It comes from whom?

A. My general passenger traffic manager, Mr. Coleman.

Q. Here in Chicago?

A. That is correct.

Q. Now did you attend the May 19 meeting pursuant to that invitation?

A. I did, yes, sir.

Q. It is already in evidence that Mr. Keeshin and his associates appeared before the committee in the forenoon. Will you tell us your recollection of that meeting of May 19 with Mr. Keeshin and his associates in the forenoon at the Union League Club, Chicago?

1564 A. I had carefully read the proposal as submitted by Mr. Keeshin and the subsequent proposal. It convinced me that they had made a very interesting and definite study of the need for transferring passengers and baggage in Chicago.

Having had the Parmelee proposal, I considered the four important questions that I was vitally interested in, as to what they both proposed, and I will lead, Judge, on to what I said.

The first was that I was interested in a definite rate that we would secure, and I was particularly interested in the labor matter, having experienced that terrible strike

condition in 1950 or 1951 and the inconvenience it caused the public, and I was interested in the equipment matter with him—

1565 By Mr. McConnell: I object to this. The question is what occurred at the meeting, and he is talking about his thoughts and reminiscences.

By the Court: Is that what you said at the meeting?

By the Witness: This is what I said at the meeting, yes, your Honor.

By the Court: Overruled.

By the Witness:

A. (Continuing) The other question I was interested in, and which I asked questions in addition to the three I stated, was the matter of the proponents opening their books showing the profit and loss to the railroads. That, I was vitally interested in.

The meeting with Mr. Keeshin, in that I asked the four questions that I related of him. He stated that his rate was definite, $1.20, $1.22 and $1.23, and I asked about the fourth and fifth years, and he said he would have to negotiate that.

If I recall on that question, he said that regardless of what the rate, of what rate he would have to grant in a wage agreement, the rate wouldn't go any more

1566 than two cents or $1.25 in the fourth year, and $1.27 in the fifth year, and he then told me, in answer to a question, that insofar as equipment was concerned, he was prepared to spend a half million dollars, that he would buy new equipment, that he would air condition the equipment, that he would have radio controlled operation, and, of course, heating in the equipment.

In regard to the question of the labor, I recited that because that had to do with what the rate would be, and he agreed, in answer to a question about showing his profit

and loss to the railroads, he said he would submit a six months statement or he would open his books for auditing, or he would agree to submit a statement every six months or every year, whichever the railroads wanted.

Those were the four questions that I asked of Mr. Keeshin and which he answered.

By Mr. Thompson:

Q. What was the attitude of Mr. Keeshin with respect to answering these inquiries as to whether he made direct answers and unequivocal answers?

A. He impressed me very, very much as knowing what he was talking about and certainly being familiar
1567 with what the railroads needed to perform this service.

Q. Was there inquiry made as to whether he had assurances of continuity of peaceful relations with his employees over the period of the proposed contract of five years?

A. He said he had very pleasant relations. In fact, I think he said he had talked to the head of the union, that if he got this contract it would have to be on a three-year basis. I don't remember what he said, but he did mention that. I don't remember the details.

Q. Was inquiry made as to whether or not he had assurances that there would be no jurisdictional labor disputes?

A. He assured us of that. I didn't ask the question, but he did state that.

1568 Q. Was there any discussion or was he asked whether or not he would want protection against a reduction in the number of people who would be transferred, that is whether he wanted the railroads to give him any assurance of a volume of business?

That is if traffic went down?

Q. Yes.

A. No, sir, at no time.

Q. What did he say about the subject?

A. He guaranteed the rate that he had quoted.

Q. Did he say that was one of management's problems, one of his problems?

A. That is right.

Q. Can you think of anything else that occurred in the forenoon discussion when Mr. Keeshin's group was present?

A. No, I can't recall; but I do know what I asked and the answers that I got.

Q. Were others of the committee also putting questions to Mr. Keeshin of the matters that came to their attention?

A. They were, but I don't remember five years ago what they were.

Q. Well, was there general discussion back and 1569 forth between them?

A. There was between the members, but I think most of the members were interested in the questions that I primarily asked. They may have asked them themselves.

Q. Now then, in the afternoon did you have the representatives of the Parmelee Transportation Company before you?

A. We did.

Q. Do you recall who was there representing that company?

A. Mr. Markin, and I think Mr. Scheeder was there and someone else, but I can't recall the name.

I think there were three of them.

Q. Who was the spokesman?

A. Mr. Markin.

Q. Tell us what occurred in the afternoon.

A. In the afternoon I proceeded to ask Mr. Markin the same four questions myself that I had asked Mr. Keeshin. The first question was with regard to the rate, and I asked him whether or not he expected the railroads to go and enter into any contract that would guarantee a rate if traffic went down one per cent that there would be a one cent increase, and if traffic went up if he would grant
1570 a one cent reduction, and he said that was his proposal, and I stated to him that under no conditions, speaking for the Baltimore and Ohio, would we enter into any such contract.

There was opposition from the other sides, I am sure, to that part of his contract.

He and his associates, they asked to be excused from the meeting, which we granted, and they were gone about ten minutes, and they came back and said they would withdraw that part of their proposal, but he stated that his rate would be $1.20, and that the rate thereafter would be one cent for each three cents that he would be required to pay in any negotiations he would have with the union.

I think the question was asked on that basis, "Does that mean—" he said up to $1.25, and I said, "Does that mean, then, that the rate could go to $1.25 the second year?"

He said it could, and the third year and the fourth year.

Q. What about his labor contract situation?

A. I asked him about his labor contract, and he said he didn't have a contract at that time, but he was negotiating for a one-year contract. He couldn't tell what
1571 he would have to do.

In regard to equipment, I asked the same question of him, and his answer was, "I will buy." He says, "You know, this will cost a half million dollars to replenish all of this equipment," but he says, and if I recall his state-

ment was that he would buy thirty pieces of equipment, new equipment, and that thereafter he would replace the old equipment as needed mechanically, but he wouldn't furnish the whole fleet, only when the other equipment had been worn out, but he did agree to furnish some, and I think it was thirty, but I am not sure, and the other question I asked him was the same which I had asked the Keeshin people, which was, "Mr. Markin, will you open your books on the loss and profit basis and show the railroads that you are entitled to the rate you are receiving and going to receive?"

He said under no condition would he do that. Those were the same four questions I had asked the other proponent.

Q. What about the air conditioning?

A. He said that was out, that he wouldn't go into that. He said that didn't mean anything to people transferring from one station to another, and I asked about radio
1572 control, and he said that wasn't necessary, that he could perform the service with telephone communications between stations.

Q. Do you recall anything else that occurred in the afternoon with the Parmelee people?

A. No, sir, I cannot.

Q. You were in Chicago, and when did you get into Chicago, on the 19th?

A. I think I got in here from St. Louis on the 18th. I think the records will show that, because I submitted my expense account that shows where I was. I think the date was the 18th, but I am not sure.

Q. Anyway, you were on the 19th?

A. That is correct.

Q. Who did you contact of your local people before going to the meeting?

A. I didn't contact anyone. I stayed at the Union League Club, and the meeting was at the Union League Club. I knew where it was being held.

Q. Who, of your local people, was there with you?

A. Mr. Coleman.

Q. And after the meeting was over that day did you and Mr. Coleman talk about it?

1573 A. We talked about it, yes, and I think it was during dinner, as we had dinner together and we talked about it all evening.

Q. That evening?

A. Yes.

Q. Did you reach a conclusion?

A. Yes, I did, and I gave the reason.

Q. What was that?

A. The reasons for the difference in the two proposals in regard to the rate, and in regard to the equipment.

Q. I mean, what was your conclusion that you reached?

A. My conclusion in my own mind was, sir, that I favored Keeshin. There was never any question about it by comparison with what the two proposals were.

Q. Were you still in Chicago the next day?

A. Yes, I was here the next day.

Q. Did you, before you left Chicago, receive some telephone communications?

A. In the afternoon on May 20 I received an advice from Mr. Nelson that he had received a telephone call from Mr. Markin from Kalamazoo changing his rate, and the committee delivered to the club a memorandum made up, and I don't have it here. I read the memorandum and in my own mind I wasn't interested in that memorandum.

1574 By Mr. Thompson:

Q. I show you Plaintiff's Exhibit 29, which is in

evidence, I understand. Is that a memorandum from Mr. Coleman respecting this telephone call?

A. Mr. Nelson?

Q. From Mr. Nelson, I mean.

A. That is it, yes, sir.

Q. Now you say you didn't pay any attention to it. What was your reaction to this?

A. In my own mind I was convinced that it wasn't cricket to have one proponent be permitted to come back 24 hours later and submit another proposal after he had had an opportunity before the full committee to state what his proposal was and what he intended to do. To me that wasn't just cricket, and I just didn't do business that way.

Q. Well, did the bid have any meaning without a labor contract with these people?

A. It did to me because I knew, he told me at the meeting he only was trying to get a one year contract. He didn't have a contract even when he was at the meeting. He was endeavoring to get one. He still didn't have any contract on this basis, and the railroads could immediately, within six months or a year, have suf-
1575 fered the same thing they did in 1950 regardless of his proposal.

Q. Well, my inquiry is that this assurance of rates for five years, naming the years, was meaningless unless you got the service.

A. That is absolutely correct.

Q. And you had no assurance of getting it?

A. And I knew, by the same token I knew that in the fifth year, if it held up, it would be two cents higher than the proposal made by Mr. Keeshin. I knew that we weren't sure of the service that we would get under any proposal from the Parmelee people.

Q. I don't know that it is material, but why did you stay over the next day? Why were you here on the 20th?

A. My daughter's divorce, and I have a son-in-law that lives here in Chicago.

Q. Do you remember when you left, where you went?

A. I think I left Saturday afternoon.

Q. To go back home?

A. Yes, I think it was. I would have to look at the record.

Q. Now did you come back again on June 3rd?

A. I came back on the morning of June 3rd on 1576 the Capital, Limited, yes, sir.

Q. Did you attend the meeting of the committee on June 3rd when the question was up for vote.

A. I did, yes, sir.

Q. Tell us what happened at that meeting.

A. The committee members were there, practically the same ones. There may have been a few more. I don't know exactly who was there on the 3rd.

The committee went over the proposals that they had received, including the subsequent proposal from Mr. Markin, in which I stated I wasn't interested, and the question came up about suppose that we award the contract to Keeshin and he doesn't have the equipment available.

The question was brought by someone, I don't know who it was, that we ought to find out how the railroads would be protected if he did get the contract, and they sent for Mr. Keeshin.

In about fifteen or twenty minutes, I don't know how long it was, he came, and they asked him then what assurance they would have if the service would continue if he should get the contract; and he stated that he had taken it upon himself to order some equipment, mentioned the

name of the company, I think, as a protection in
1577 case he got the equipment he would be prepared to furnish the service—

Q. In case he got the contract, you mean?

A. The contract.

And I think someone humorously said, "Suppose you don't get the contract," and I think his answer was, "I guess I will be in the automobile business or I will be in the station wagon business," or something to that effect.

1578 Q. Well, after that interview with Mr. Keeshin, getting that point settled, what happened? Did he leave then?

A. He left the meeting, and the committee took a vote and voted to recommend to the general committee to award the contract to Mr. Keeshin.

Q. By the general committee, you mean this representative group of all the lines that terminate in Chicago?

A. The Chicago Lines Committee they call it.

Q. Did you come back and attend a meeting of the Chicago Lines group on the 13th of June?

A. I did, yes, sir.

Q. What happened at that meeting?

A. The chairman explained the recommendations as made by the committee of six. The proposals of each one was not discussed at that meeting. It was just the committee's report was presented by Chairman Padrick, who acted as chairman of that committee, and the vote was taken, and it was unanimously in favor of Mr. Keeshin.

Q. When you say of that committee, you mean of this large terminal lines committee?

A. The twenty-one committee, that is correct.

1579 Q. Had you attended the meetings of the terminal lines occasionally yourself while you were located here in Chicago?

A. I did with my associate, Mr. Slottman, who is now deceased, and was succeeded by Mr. Nelson. Many times I attended their meetings when they were called.

Q. After you went down to Baltimore, do you have any recollection of whether you came out to any of those terminal lines large committee meetings or not?

A. I couldn't recall any, Judge, no.

Q. Now, Mr. Wittington, on your travels into Chicago, as you have already expressed it, have you made observation to see whether or not there is any difference in the character or quality of the service that was rendered in the transportation of passengers?

A. I did, yes, sir.

Q. And what did you observe?

A. Every time I came to Chicago I made it a point to observe the conditions that existed in the Grand Central Station.

Q. What were the results of your observations?

A. Well, I can say the service that we were giving
1580 our patrons was fine. By comparison with what we were giving them under Parmelee, I would say it was excellent.

Q. What were the features that you thought improved the service to your passengers, to the public?

A. I thought the fact that—I will use this last week as an illustration, if I may, Judge. Coming in last week, my observations on the Capitol Limited, the week before last we brought in 225 passengers, and out of that 225 there were probably a hundred fifty that wanted to be transferred, and the Keeshin people had three vehicles there to transfer the people. As soon as those came up with their own baggage, arrived at the side, there was an attendant, and I think there was also a stewardess there, in uniform, helping the women with children.

As soon as they came up, they were put in a vehicle, and when that was filled, it was moved away, and as soon as it moved away, there were three or four more there ready to remove the rest of the passengers.

Now that is something that we never experienced under the Parmelee operation.

Q. How is it possible to get this equipment there
1581 so quickly?

A. It was radio-controlled. You could tell that they tell drivers, apparently, that the Capitol Limited is coming in at 8:20, and the vehicles are there when the train gets in or when passengers get up there with their baggage or the baggage reaches the passenger.

Q. Do you know or have you observed any change or improvement in the handling of the checked baggage?

A. Well, I wouldn't have anything to do with that, Judge. I don't go around to the baggage room and check or follow that through. No, I wouldn't.

Q. Have you observed the benefits of the air conditioning of equipment in the summertime?

A. I have gotten in it myself.

Q. Was it working?

A. It certainly was. I think they have got larger units in the ones that are running now, so that it is very comfortable.

By Mr. Thompson: That is all.

1582 By the Court: Do any of the other defendants wish to ask questions?

You may cross examine.

Cross Examination by Mr. McConnell.

Q. When was the first time that you sat on this subcommittee?

A. Probably in 1941 or 1942, on the general committee. The sub-committee was when it was called on May 19.

Q. Did you sit on the committee at any time during 1954?

A. I did not.

Q. Did anybody report back to you and tell you that the purpose of forming this sub-committee in 1954 was to see if they could get a cheaper rate on these coupons?

A. Mr. Coleman did, yes.

Q. When did he tell you that?

A. I wouldn't remember the date; in a conversation with him.

Q. Well, can you tell us approximately when it was?

A. No, I wouldn't know.

Q. Was it anytime in 1954?

A. I wouldn't know unless I saw some memoran-
1583 dum that had been prepared to that effect.

Q. Do you recall in effect what he told you, that is, Mr. Coleman?

A. That the railroads were trying to interest other carriers in performing the service. I think I stated before in my testimony, he mentioned some of them, Railway Express, Hertz, Gray Line. He mentioned four or five of them, but I wouldn't recall all that he mentioned.

That they were trying to get them interested in performing a service or submitting a proposal to perform the service.

Q. At a lower rate than Parmelee?

A. At a lower rate, of course. That is what we were interested in.

Q. That is what you were primarily interested in, wasn't it?

A. If we could get it, yes.

Q. Do you know how many people were solicited to find out whether they could get a lower rate?

A. No. I think the members of the committee could state that.

Q. Well, I am asking you what you know about it.

A. I don't know about it, no, sir.

1584 Q. Do you know any of them that were solicited aside from Keeshin and Parmelee?

A. I think Willett, the Railway Express.

Q. Did you know that the Railway Express said they couldn't do it for the rate that was being charged by Parmelee?

A. They were interested, as I recall, only in Coleman told me, only interested in the transfer of baggage and that on the basis of their usual charge for performing a service which is 15 per cent overhead.

Q. That is 15 per cent plus their cost?

A. That is correct. I think that was in conversation with Mr. Coleman.

Q. Well, they weren't interested in carrying passengers at the coupon rate charged by Parmelee, were they?

A. No, they were not. He never told me that they were. I didn't see any proposal.

Q. What is the Railway Express Agency?

A. It is a company composed of a transfer or a baggage and pickup and delivery service that is controlled by the railroads.

Q. It is the railroads' own company, isn't it?

A. The stock is controlled by the railroads. Certainly, personally, I can speak for myself, if the Railway Ex-

1585 press went into the transferring of passengers in Chicago, if they did or proposed to, it would certainly be just a subsidiary of the railroads performing the service.

Q. Well, the railroads' own company decided they couldn't do it for the coupon rate charged by Parmelee, isn't that the fact?

A. No, it is not a fact.

Q. It isn't?

A. No. They said they weren't interested in it.

Q. Didn't they tell you that they couldn't do it for that price?

A. They didn't tell me anything, Mr. McConnell.

Q. All right. Didn't they tell the committee they couldn't do it?

A. They may have told Mr. Coleman they weren't interested in it, and that is what was told me.

Q. You don't know anything about that subject of your own knowledge?

A. Only what Mr. Coleman told me as my representative on the committee.

Q. Now, were you checking with Mr. Coleman as early as 1954 on what was doing in this committee?

A. Checking with him every time probably I came
1586 here, every time probably I came here, asking what they were going to do about this Parmelee contract when it was up.

Q. All right.

Now, when did you have your first talk with Mr. Coleman?

A. That I could not remember a date. I come here two or three times a month. I couldn't remember what date I talked to him.

Q. Can you remember any time you had a talk with him that you can pinpoint as to a time?

A. No, I could not.

Q. Can you remember the substance of any talk you had with Mr. Coleman in the year 1954, and where it was?

A. It must have been — it could have been in his office or it could have been at lunch at the Union League Club. I couldn't remember where it was. It was a general discussion of the Parmelee arrangement.

1587 Q. Well, did you know that there were some eight or nine companies that were being contacted to see whether they could get a lower coupon rate?

A. I didn't know that.

Q. From the other bidders?

A. I didn't know that, but I have heard it since. I didn't know it in 1954, the details of it.

Q. And did you know that not one single one of those companies was willing to do the passenger transfer service for less than $1.20 per coupon?

A. I think I heard that Willett's bid was lower than $1.20.

Q. All right. Did you also hear that Willett withdrew their bid?

A. I know they withdrew their bid.

Q. How did you learn that?

A. I heard it here today.

Q. In the courtroom?

A. I didn't know it.

Q. You didn't know it until you heard it?

A. I didn't know what their bid was until I heard the $1.10 mentioned. I knew they had withdrawn their bid, but I didn't know about the $1.10 business.

Q. Well, when did you learn they had withdrawn 1588 their bid?

A. When they didn't, apparently when they didn't send in any proposal between the time they had been asked —

Q. I know, but when did you learn about it? Was it in 1954, 1955, or when?

A. I think it was 1955. I don't know when in 1955.

Q. Now you spoke about all of these requests that were being made by Parmelee for an increase in coupon rate. You knew from your experience in the railroad business that their wage charge was going up, didn't you?

A. All charge were going up.

Q. Everything was going up. We were in a period of increasing costs to the operation of a business, isn't that correct?

A. That is correct.

Q. The railroad business and also the transfer business, isn't that true?

A. That is true.

Q. Do you know how many rate increases the Parmelee Company had had in their 102 years — I don't want to quibble over whether it is the same company or some
1589 successor, but let's put it, the Parmelee Company and its predecessors.

A. I can speak from my knowledge when I was living, if that is what you mean.

Q. I don't want to get you before you were born. Just take the time you are alive.

A. I can go back to 1934.

Q. All right.

A. Prior to that, if I can recall, and I have nothing to indicate that to me, if I can recall the rate prior to 1934 it was 85 cents, and because of the depression years in 1934 it went down to 75 cents. I think the war came along, and the rate went up to 85 cents. Then it went, whether it was 1947 or 1948, I wouldn't remember the exact year, I think it went to a dollar, and then I think it went to $1.05.

1590 Q. In nineteen what, 1952?

A. I said I couldn't remember the years. I am telling you when the rate went up. $1.05, and then I think it went to $1.12-½, and I think it went to $1.20, and I think it went to $1.22.

Q. It went to $1.20 in 1954?

A. I guess that is it. I can't give the year. I don't have anything in front of me.

Q. You are doing pretty good.

A. Sir?

Q. You are doing pretty good. You have not missed it far.

A. Well, I remembered that much, because I was interested in the constant increase in rates, and if I may elaborate, your Honor—

Q. Well, now, wait a minute. Your counsel can elaborate with you. Just try and stay with me for a while.

A. I am with you.

Q. This constant increase in rate consists up to 1954, from 1948 to 1954 of an increase, two increases, one from $1.00 to $1.05, and one from $1.05 to $1.20, isn't that correct?

A. That is what the figures were. In 1947 or 1948 to 1951 was from 85 cents to $1.22, isn't that correct? 1591 May I state that is correct?

Q. That is not correct as my notes show it. The increase was from 1942 where it was 85 cents, and I think you have already testified to that.

A. That is correct.

Q. And that rate proceeded in force until the year of 1948, at which time I believe you testified it was $1.00. There wasn't any change in between those years, was there?

A. In 1947 it was 85 cents, and in 1954 it was $1.22. That is what I stated.

Q. You don't know of any other increase, do you?

A. No, I don't.

Q. The $1.20, which was being charged in 1954, no company, even including Keeshin, ever went under that rate in their bid, did they?

A. That was Keeshin's opening bid.

Q. He never got under it, did he?

A. No.

Q. His opening bid was his final bid, wasn't it, on rates?

A. $1.20.

Q. And other rates for the succeeding years of his contract never varied from the time of his first
1592 proposal of December 15, 1954 until the end of the negotiations, is that correct?

A. 1955, you mean?

Q. No, I mean December 15, 1954.

A. Keeshin didn't have the contract in 1954.

Q. I didn't say so. I said his bid of December 15, 1954, that is never varied?

A. That is correct. His original bid did not vary.

1593 Q. You spoke of it not being cricket to do this and do that. Did you have a talk with your president, Mr. Simpson, at which he told you that Hugh Cross had indicated that he had an interest in this Keeshin contract?

By Mr. Thompson: Objection.

By Mr. Meserow: Objection to that.

By the Court: The objection may be sustained, and the question may be stricken.

By Mr. McConnell:

Q. When did you first become personally interested in attending meetings in this matter?

A. When I received the bids of the Keeshin Company and the Parmelee Company.

Q. And what meeting occurred after the Keeshin, after the Parmelee bid?

A. I don't know that I attended any after that, after the Parmelee bid was received.

Q. What meetings did you attend?

A. The May 19, June 3 and June 13th.

Q. At the May 19th meeting there were how many people present?

A. I would say ten.

Q. Can you tell us who they were?

1594 A. Mr. Bone, passenger traffic manager of the New York Central, Mr. Comer, general passenger traffic manager of the Pennsylvania, and Mr. Holt, general passenger agent of the Pennsylvania, Mr. Sloan, the assistant general passenger traffic manager of the Santa Fe, and the Illinois Central, I think, was by Mr. Smart, and there were myself and Mr. Coleman and Chairman Padrick. If there were some more, I can't remember them.

By Mr. Thompson: The North Western group he omitted.

By Mr. McConnell:

Q. Judge Thompson says you have not mentioned the North Western group, so we will ask you that. Who was there from the North Western?

A. I think it was Mr. Brennan and Mr. Quackenbush, I think.

Q. Well, now, at this May 19th meeting, you didn't do all the talking, did you?

A. I talked about the four questions that I was particularly interested in, yes. I don't know what the other questions were, but they were the ones I was interested in.

Q. Did you have any discussion with the other 1595 committee members after Mr. Keeshin and Mr. Markin had appeared as to what their views were as to who was to get this contract?

A. I definitely did not.

Q. You never discussed it with anybody there as to what their view was going to be?

A. Never.

Q. And you never heard them discuss it as what their view was going to be?

A. Some of them said they wanted to take it back to their executives, and they didn't express their views one way or the other, and I didn't discuss it with any of them.

Q. So there was nothing in that meeting of May 19 which would indicate what the concensus of opinion among those present was?

A. Not to me there wasn't.

Q. And you were there all the time?

A. Yes, and I was there.

By the Court: Are you folks hungry? Are you ready for lunch? All right; we will recess until two o'clock.
1596 Have a nice lunch and don't talk to anyone about the case.

(Thereupon a recess was taken until 2:00 o'clock, p.m., of the same day, Thursday, May 5, 1960.)

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VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

In the

United States Court of Appeals

For the Seventh Circuit

No. 13160

PARMELEE TRANSPORTATION COMPANY,

[illegible]

JOHN L. KELSHIN, RAILROAD TRANSFER SERVICE, INC., HUGH W. CROSS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD F. SIMPSON, PAUL E. FLUCHT, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

APPENDIX

VOLUME IV

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1597 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Thursday, May 5, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

1598 Present: (continued)
Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1599 By the Clerk: The case on trial.
By the Court: Bring out the jury:

(Thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: All right; proceed.

JOHN F. WHITTINGTON, called as a witness on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (continued) by Mr. McConnell.

Q. Mr. Whittington, you left Chicago in 1946, as I understood your testimony, is that correct?

A. That is correct.

Q. Did you serve on this subcommittee of six or did you attend any of the meetings of that sub-committee at any time subsequent to 1946 up to the meeting of May 19, 1955?

By Mr. Thompson: If the Court please, there isn't any evidence that there was any committee of six in 1946, 1947, 1948, or any other such date.

1600 By the Court: He may answer yes or no.

By the Witness:

A. No, sir.

By Mr. Thompson: It assumes what isn't so.

By Mr. McConnell: Did you say it assumes?

By Mr. Thompson: I said it assumes there as a committee.

By the Witness: There was no such committee as I recall.

By Mr. McConnell:

Q. There was no such committee?

A. That I attended, as I remember.

Q. Now, who was Mr. R. E. Coleman?

A. Former passenger traffic manager at Chicago.

Q. Of your railroad?

A. Of my railroad, and now he is freight traffic manager at Chicago.

Q. Just what did he have to do with this subcommittee of six?

A. He was the Baltimore and Ohio officer in charge of the Chicago territory, and delegated Mr. Nelson as a member of the committee.

Q. And he was under duty, was he, in your or-
1601 ganization, to report to you as to what went on?

A. If it was anything of interest that I should know about, he would, but not minor things he wouldn't.

Q. It had to be a matter of some importance before he would report it to you?

A. That is correct.

1602 Q. I show you a document which has been received here in evidence as Plaintiff's Exhibit 34, which purports to be a memorandum from Mr. Coleman to you, under date of January 7, 1955, and I ask you whether you received that memorandum or about the date it bears, and read it.

A. Yes. Those are my initials up there. It was referred to Mr. Holter, my assistant.

Q. And those initials show that you read it?

A. Show that I marked it over. I presume I read it.

Q. What was the purpose of putting your initials on it?

A. I marked it for my assistant who handled all contract matters, Mr. Holter.

Q. Now, Mr. Coleman states this to you, and this is in evidence:

> "As previously informed you, the Chicago Terminal Lines early last year appointed a sub-committee to make a survey of the Chicago transfer situation, particularly from an economic rather than a service standpoint as the latter has been satisfactory in its handling by the Parmelee Transportation Company."

1603 Did you see that statement made at that time?

A. I could have read that statement. I probably did. We are speaking about 1955?

A. January 7, 1955.

Did you take exception to the statement in any way?

A. Not in 1955 I didn't.

Q. Well, this is January 7, 1955. In response to that, you didn't take any exception to that statement?

A. That statement doesn't say for what period the service had been satisfactory. It could have been one month.

Q. What period prior to January 7, 1955 had the Parmelee company been rendering the service?

A. As long as I can remember.

1604 Q. There is also this statement:

"Should any of the other contractors subsequently submit proposals, even though the deadline is long passed, we will, of course, see that you are kept fully informed. R. E. Coleman."

What was the deadline that was long since passed?

A. I don't know what deadline the committee set on it. I don't know what date, I mean, the committee set as a deadline to receive the proposals. I didn't handle that.

Q. You don't know?

A. That is correct.

Q. Did you ever find out?

A. I never asked.

Q. Well, then, you didn't find out, did you?

A. I didn't find out.

Q. Nobody told you, you didn't ask and you never knew?

A. That is true.

Q. In your testimony this morning—Before I leave that, you said it wasn't cricket this morning because somebody from Parmelee was submitting a further proposal

1605 after May 19. Was that a deadline?

A. It was a deadline as far as I was concerned.

Q. You weren't setting a deadline for the committee, were you?

A. No, I was setting a deadline as far as the Baltimore and Ohio Railroad was concerned for a decision on the contract.

Q. You weren't in a position to dictate to the committee what the deadline was, were you?

A. I didn't dictate anything to the committee as far as the Baltimore and Ohio is concerned.

Q. And the committee didn't tell you there was any deadline at that time, did they?

A. Not that I know of.

Q. So the only deadline you are talking about is the one you had in your own mind for the Baltimore and Ohio, is that right?

A. Not at all. I had, as I explained, and my testimony will indicate what I had in my mind as to the two proponents, and I make my decision on that.

Q. So that May 19 was the end of it as far as you were concerned?

A. I was satisfied, because both proponents appeared before me, as a member of the committee, which 1606 made their final decision as far as I was concerned.

Q. You didn't suggest that Keeshin submit something after May 19?

A. I never met, never spoke or never saw Mr. Keeshin until he appeared before that committee in my life. I never met the man in my life until he appeared before that committee. How would I suggest anything to him? I never talked with him.

Q. I didn't ask you whether you had ever met him. I asked you if you ever suggested that that be done.

A. Never in my life.

Q. You are sure of that?

A. Positive, under oath I didn't.

Q. I show you a document marked for identification as Plaintiff's Exhibit No. 30, which is now in evidence in this case, which is supposed to be a memorandum from you or a memorandum by you and some handwriting. Can you tell us whose handwriting it is?

A. That is my handwriting. The date of it is—I can't read it. It is covered up.

Q. Well, I guess if you can't read it, I can't either, and I guess we are even on that.

1607 By the Witness: Your Honor, can I ask the date of this memorandum? It is covered, and I can't even see the date.

By the Court: If you can't read it, that is the answer.

By Mr. Freeman: May 20, 1955.

By the Court: Counsel says May 20, 1955.

By the Witness: That is correct, yes.

By Mr. McConnell:

Q. That is the day after the May 19 meeting?

A. That is correct.

Q. Where did you write that memorandum?

A. I wrote this from the memorandum that was delivered to me by Mr. Nelson.

Q. I asked you where.

A. My secretary wrote it. I didn't write it. My secretary wrote it.

Q. Did you dictate it?

A. Yes, I dictated it.

Q. Where?

A. I didn't dictate it. All he had to do was copy it and give me a copy of it. There was an identical memorandum Mr. Nelson delivered to the Union League Club on the 20th.

1608 Q. You didn't prepare it?

A. I didn't prepare it. Mr. Nelson prepared it.

Q. It has your name on it?

A. It is a memorandum for the file so we would have the record of everything that went on in connection with this meeting.

Q. Mr. Nelson you say prepared it?

A. No, I said Mr. Bone delivered it to Mr. Nelson.

Q. Did you or did you not prepare this memorandum which appears over the name "J. F. Whittington," under date of May 20, 1955?

A. If it is the same memorandum that I think it is—

Q. Well, look at it.

A. If I can see Mr. Nelson's memorandum, then I would know whether it is or not.

Q. I didn't ask you a thing about Mr. Nelson's memorandum. Just look at that memorandum.

A. This was written by me after I had received a memorandum from Mr. Nelson of which I don't have a copy.

Q. All right.

A. The contents I think are about the same.

Q. Well, I didn't ask you anything about the contents of any other document. This morning in your testi-
1609 mony you said, or I will ask you if you didn't say this:

"And I knew by the same token, I knew that in the fifth year if it held up it would be two cents higher than the proposal made by Mr. Keeshin. I knew we weren't sure of the service we would get under any proposal from the Parmelee people."

In your memorandum of May 20—

By Mr. Thompson: If the Court please, we object to reading from transcripts. It is improper as counsel well knows. The jury will remember the answers, and he can examine the witness and cross examine him all he pleases, but he can't read from a transcript and repeat the evidence in the record.

By Mr. McConnell: I can read from the transcript and ask him if he so testified, and I ask that question. I think I skipped the question.

By Mr. Thompson: You can't even do that, as counsel ought to know.

By Mr. McConnell: Yes, I can.

By Mr. Thompson: We object to it.

1610 By the Court: I will let him answer.

By Mr. McConnell:

Q. Did you so testify?

A. Let me have the question, please.

By Mr. McConnell: Read the question.

(Whereupon the record was read as above recorded.)

By the Witness:

A. That is correct.

By Mr. McConnell:

Q. I call your attention to your memorandum under date of May 20 and in your own handwriting and ask you if those red figures inserted there are the coupon rates to be charged by Mr. Keeshin under his proposal.

A. That is correct.

Q. And will you tell us under the fifth year in your own memorandum what the rate was that was to be charged by the Parmelee company and the rate that was to be charged by the Keeshin company?

A. $1.27 for Keeshin.

1611 Q. What was it for Parmelee?

A. The memorandum that was delivered on the 20th indicated that it was $1.25.

Q. And that is your memorandum there, isn't it?

A. Taken from the one delivered to me.

Q. All right, it is your memorandum.

A. Absolutely right.

Q. So that on your own memorandum, it showed that the Keeshi proposal was two cents higher than the Parmelee proposal in the fifth year, doesn't it?

A. Absolutely.

Q. Just the opposite of what you testified to, I think, isn't it?

A. No, it is not the opposite. It is $1.27 is what I said, and that is what it is.

Q. That is for Keeshin.

A. That is correct.

Q. That is higher than the Parmelee proposal?

A. I said it was higher. I knew it was two cents higher.

Q. In your testimony this morning you said that the Parmelee proposal was higher.

A. Well, then if I used the word—it is Keeshin would be two cents higher. Just the name of the 1612 company is in error, that is all there.

Q. So you really meant what your memorandum says?

A. That Keeshin's rate the fifth year would be two cents higher.

Q. Than Parmelee?

A. Than Parmelee.

Q. And you knew, you had been informed by Mr. Coleman, that the whole purpose of this subcommittee was to try to get a lower coupon rate, isn't that right?

A. That is what the memorandum said. That is what he wrote in his memorandum.

Q. Well, he was keeping you advised of it, wasn't he?

A. That is correct, but I was more interested in service, too. That was my interest.

Q. Well, did you write him at any time—

A. Not that I can remember.

Q. Prior to May 19, and tell him, "I am not interested in the coupon rate; I am interested in the service"?

A. No, I did not.

Q. Did you tell anybody that was serving on that committee on behalf of the Baltimore and Ohio, "I am not interested in the coupon rate; I am interested 1613 in the service"?

A. I was interested in any proposition—

Q. That isn't what I asked you.

A. What are you asking me? What do you want to know?

By Mr. McConnell: Read the question.

(Thereupon the question was read as above recorded.)

By the Witness:

A. No, I did not.

By Mr. McConnell:

Q. Now, when that memorandum, this is May 20, which is a day after the May 19 meeting, isn't it?

A. That is correct.

By Mr. Thompson: We will concede that.

By Mr. McConnell: Good. I am glad to have some concession from you on this record.

By Mr. Thompson: May 20 is one day after May 19.

By Mr. McConnell: That is about the only concession I could get out of you.

By Mr. McConnell:

Q. Will you note on that memorandum that you
1614 say "suggest" — I had better get the exact language.

A. "Suggest advise."

Q. "Committee after talk with his labor people would be no increase beyond 1957 or $1.23 rate would continue last two years of contract."

Now, who are you referring to there?

A. Mr. Keeshin's remark to the committee. The word "he" means Mr. Keeshin.

1615 Q. Did he ever make such a proposal?

A. He didn't make it as a proposal. He told the committee what would happen in the last two years; that he hadn't negotiated his contract for the fourth and fifth years, but under no condition would the rate be higher than he had specified, $1.25 and $1.27.

Q. That isn't what your memorandum says, is it?

A. It says, "suggest advise."

Q. This says:

"It would be no higher beyond 1957 or $1.23 rate."

A. And if he didn't have to give any increase, he said he would continue at the $1.23 rate, but he had to negotiate the last two years.

Q. Well, at no time did Mr. Keeshin ever change —

A. From the $1.27 —

Q. (Continuing) — from the rate that he first proposed on December 15, 1954, isn't that correct?

A. No. There is a supplement to this in which he verifies the fact here. I think it was a later date, that he gave a definite rate. January 15, he said,

"Since the labor contract is now settled covering
1616 a three year period, I am willing to correct the original proposal on the escalator clause so that the rate would be $1.22 and $1.23."

Q. Where do you get the $1.25 and $1.27 for 1958 and 1959?

A. That is what was discussed at the meeting with the committee.

Q. And that is what he agreed to in his contract, wasn't it? Isn't that the rate you finally contracted upon?

A. He didn't specify that in his contract. He told the committee that on the 19th.

Q. All right. His proposal then was for the year 1958, $1.25 for the coupon as opposed to $1.24 by Parmelee; and $1.27 for 1959 as opposed to $1.25 by Parmelee, isn't that right?

A. There is a difference of two cents on the last year.

Q. That is right.

A. That is what I said, two cents on the last year. I testified to that this morning.

Q. You weren't suggesting that he lower his rate?

A. I never made a suggestion to Mr. Keeshin in any way.

1617 Q. In the meeting, you didn't make a suggestion?

A. Not a suggestion that change his contract or do anything. I asked him questions pertaining to his

service and his rates as far as the Baltimore and Ohio was concerned. I made no suggestion of any kind to Mr. Keeshin.

Q. All right. All you were doing was asking questions to get some information, is that right?

A. For the benefit of my railroad which I represented, that is correct.

Q. Now as soon as you heard the proposal — I will withdraw that.

After you saw this difference in rate which you set out in this memorandum of yours, you came to the firm conviction, did you, that Keeshin ought to have the contract?

A. The rate wasn't exactly the controlling factor. The labor problem was what was the controlling factor. One year contract versus three year contract meant better service to our patrons over the three year period, and the Parmelee people had no contract, and the two cents in the fifth year would be worth it as far as the Baltimore and Ohio was concerned if we knew we were going to have the right service.

1618 Q. Did Keeshin have a contract at that time?

A. For three years, he did.

Q. With a union?

A. Yes.

Q. For service by whom?

A. I don't know; to perform this service.

Q. He didn't even have a company at that time, did he?

A. He must have had a contract with the union because that is what he said.

1619 Q. Did you ever see any contract he had with the union for three years at that time?

A. No. I have got his letter in writing where he said he had a contract. I took him at his word.

Q. He had assurances, isn't that it?

A. Maybe the word is assurance.

Q. How could he have a contract when he didn't even have a company? He didn't have a contract —

A. May I answer? January 15 is what he said, "Since the labor contract is now settled covering a three-year period." That is what I had.

Q. You interpreted that as meaning he had a contract?

A. Well, that is what it says. To me it does.

Q. He didn't have any contract from the railroads, did he?

A. No, not on January 15.

Q. And he didn't have any on May 19, did he, either?

A. I don't know. I don't know.

Q. Well, he didn't have any from your railroad, did he?

A. No, he didn't have the contract to perform the services even.

Q. That is right. You had entered into no con-
1620 tract with him on May 19 to render the service?

A. Not a bit.

Q. Not your company?

A. No.

Q. And you hadn't given him any assurances that he was going to have it, did you?

A. I had not.

Q. So far as you know, the committee hadn't acted on it at that time, had it?

A. The committee hadn't acted on May 19.

Q. Yet you think he had a contract with labor to perform these services with the union prior to the time he had any contract with the railroads to do the business?

A. I don't know whether he was using his present union or who he was using. When he used the words "contract with the union" I presume he was talking about the people that would perform the service.

Q. Well, now, this was a big matter of interest to you, labor?

A. It certainly was.

Q. Did you know what union he was going to use?

A. I did not.

Q. You never even looked into that?

1621 A. Never did.

Q. You didn't know that there has been disputes between that union and the AFL Teamsters here in Chicago for years?

A. I didn't know that.

Q. You didn't know there had been a labor war continuously going on —

By Mr. Meserow: Objection.

By Mr. Keating: Objection. There is no evidence of that at all. This is Mr. McConnell's imagination.

By Mr. Meserow: Objection. There has been no labor war.

By the Court: Objection sustained.

By Mr. Thompson: I move to strike the questions and answers based on an assumption of fact which is not in evidence.

By the Court: I sustain the objection.

By Mr. McConnell:

Q. Did you ever make any investigation of that fact?

A. I did not.

Q. Did you ever order anybody else to make such an investigation?

1622 A. I did not.

Q. But that was the big question in your mind, the labor question, was it?

A. Having a contract.

Q. Yes. Parmelee didn't have any contract with your company at any time extending beyond —

A. I said he didn't.

Q. — extending beyond July 15?

A. I said he didn't.

Q. I am talking about with your company, the railroad.

A. We are only a member of all the railroads that are in the Chicago terminal. We are one of the twenty-one lines.

Q. I know you are one of the twenty-one lines. I am asking you whether you had contract — let me ask it this way: When did your understanding under which Parmelee was handling your transfer work expire?

A. I think it was on a year-to-year basis.

Q. You never had any contract with him, did you?

A. No, never had any contract.

Q. You never gave him a contract. You could terminate it at any time?

1623 A. Mr. Padrick handled the contract. I wouldn't know.

Q. I don't care who handled it. I said you didn't have one, did you?

A. Not that I know of.

1624 Q. Did you know that Parmelee company had the A.F. of L. union serving them here?

A. I don't know.

By Mr. Thompson: We object to that as immaterial.

By Mr. McConnell:

Q. That it had been serving them year after year?

By Mr. Thompson: There is no evidence of any such thing.

By the Court: I will sustain the objection.

By Mr. McConnell:

Q. Was the labor element a thing that swayed your mind on this question?

A. The strike is what swayed my mind, and the fact that Mr. Markin would not divulge to the railroads a profit and loss to indicate that he was even entitled to the rate he was getting over this period of years.

That was one of the primary thoughts, combined with the fact we had suffered a strike in 1950.

Those are the things that I was concerned about as far as my railroad was concerned.

Q. That strike was four years ago, four years prior

to this time, five years prior to this time, wasn't 1625 it?

A. 1950.

Q. Five years prior to the time of this negotiation?

A. Yes.

Q. The other thing was the profit and loss statement, is that it?

A. That is correct.

Q. You never had any contract that required Mr. Markin to furnish a profit and loss statement, did you?

A. No, he wasn't required. He was asked to do it.

Q. You had no legal right to require him to furnish a profit and loss statement, did you?

By Mr. Thompson: We went all over that this morning. Objection.

By the Court: Objection sustained.

By Mr. Thompson: He is wrestling around and arguing his case, and we object to further examination along that line.

By Mr. McConnell:

Q. I show you a document, and I refer to a document which is in evidence here, I believe, a document in evidence which purports to be a memorandum of the meeting in Chicago of Thursday, May 19, 1955, of the sub-
1626 committee of the Chicago Terminal Lines with Keeshin and Parmelee, their proposals under date of May 20, 1955, which is Plaintiff's Exhibit No. 25.

This recites that this is the meeting of the regular subcommittee of the Chicago Terminal Lines augmented by the presence of Mr. J. F. Whittington, general passenger traffic manager, Mr. R. E. Coleman, passenger traffic manager, Baltimore and Ohio Railroad—

By Mr. Thompson: No, the Pennsylvania.

By Mr. McConnell: Do you want to read this, or shall I?

By Mr. Thompson: Well, I just wanted you to read it truthfully.

By Mr. McConnell: I read it exactly as it is written.

By Mr. Thompson: No; Mr. Whittington of the Baltimore and Ohio and Mr. Comer of the Pennsylvania.

By Mr. Freeman: You are wrong.

By Mr. McConnell: You are just about as accurate about that as everything else in this lawsuit.

By the Court: Let's proceed.

By Mr. McConnell: I will read it again.

1627 By Mr. Thompson: All right, fine.

By Mr. McConnell:

Q. The regular sub-committee of the Chicago Terminal Lines augmented by the presence of Mr. J. F. Whittington, general passenger traffic manager, and Mr. R. E. Coleman, passenger traffic manager, Baltimore and Ohio Railroad, Mr. E. R. Comer, passenger traffic manager of the Pennsylvania Railroad, Mr. J. B. Brennan, passenger traffic manager of the Chicago and North Western Railway.

1628 You have told us why you were there, but do you know why these other people were there augmenting the regular subcommittee?

A. I guess to listen and talk to the two proponents, the same as I was.

Q. Who suggested the idea of somebody other than the regular committee attending?

A. I wouldn't know that. I know what my opinion was and what I should do.

Q. I didn't ask you about your opinion. I just asked you if you knew who suggested that, if somebody did?

A. I don't know.

Q. You told us this morning that Mr. Keeshin suggested in that meeting that he was going to spend up to $500,000 in new equipment. Wasn't it the Parmelee people that suggested they would spend up to $500,000?

A. Mr. Markin's remark was it would cost $500,000.

Q. Didn't he say that he would spend up to $500,000?

A. I don't know whether the word was "cost" or "spend", but he used the same term "$500,000".

Q. Did you understand that he was proposing that he would spend $500,000 on new equipment?

1629 A. Eventually, he said that is what it would be. I think he said that he would buy so much equipment and then replace the old as it wore out.

Q. Did you understand Mr. Markin to say that he proposed to spend $500,000 for new equipment?

A. I don't remember the word "proposed".

Q. You are going to quibble with me over the word "propose," is that it?

A. Either propose or cost. I couldn't remember five years ago what he said, but I think he said it would cost $500,000.

Q. It would cost $500,000 for what?

A. To replace all of the equipment to handle the transfer business in Chicago.

Q. Do you recall that he proposed at that meeting to purchase thirty—and you don't need to refer to any notes, as I am asking you this for your recollection—

A. I was looking—I thought you were looking for the $500,000.

Q. No, I am not looking for anything. Do you recall that Mr. Markin said that he intended to purchase thirty, twelve passenger limousine type vehicles?

A. Yes. I don't know whether it was thirty or forty. It may have been forty, but thirty is what I think 1630 it was.

Q. Do you remember they were twelve passenger limousines that he was going to purchase?

A. No, I don't remember the type, no sir.

Q. Do you recall he stated, "It is expected it will take at least twelve months to complete the replacement with the thirty, twelve-passenger limousine type vehicles"?

A. I think he said it would take twelve months before he could get the additional equipment of thirty, if he said thirty, pieces of equipment, I think he said it would take six, twelve or eighteen months to get it. I think that is what the statement was, something to that effect.

As to time, I wouldn't know exactly what he said.

Q. You understood, didn't you, that he was intending to amortize the $500,000— Well, let me ask you this:

I am reading from the memorandum, the notes of the meeting which is in evidence, and I ask you whether he did state this:

1631 "Mr. Markin advised that the new equipment mentioned above which will be purchased and put in service as promptly as available will cost in the neighborhood of $500,000."

Do you recall him making that statement?

A. That is right. In fact, that is in his proposal. I think it is in his proposal.

Q. I think it is, too. I am just trying to get you to admit it.

So the $500,000 that you were talking about wasn't attributable to Mr. Keeshin's offer; it was attributable to Mr. Markin's offer, wasn't it?

A. If my recollection serves me correctly, they both used $500,000.

Q. I will show you the memo and the notes of the meeting and ask you if you can show me anywhere in here where any mention of $500,000 is contained in those minutes except on the proposal by Mr. Markin.

By Mr. Keating: I object to that, your Honor. The witness has testified what his recollection is. Mr. McConnell

is showing the witness an exhibit prepared by some-
1632 one else and is attempting to create the impression Mr. Keeshin didn't mention the $500,000, whether or not the fact is mentioned in that exhibit prepared by some third person, and on that basis I object.

By Mr. McConnell: This memo was prepared by the Baltimore and Ohio representative and appears from their files, produced from their files and offered in evidence against the Baltimore and Ohio.

By Mr. Keating: And it wasn't prepared by Mr. Whittington, the witness who is being questioned.

By the Court: I have forgotten the question.

By Mr. McConnell: I asked him, your Honor, whether there was anything in the memorandum that shows that, and he can point it out.

By the Court: He may look at it if it does. He may look at it.

By the Witness: Do you want to see this, your Honor?

By the Witness:

A. This memorandum only mentions Mr. Markin.

By Mr. McConnell:

Q. You have heretofore testified, have you not,
1633 that those memoranda which came out of your files are accurate, an accurate report of what occurred at that meeting.

A. That is correct.

By the Witness: Your Honor, may I answer the question now?

By the Court: I don't know of any question.

By Mr. McConnell:

Q. You answered the only question I asked you. I asked you if it accurately set forth what happened at that meeting, and I thought you said "Yes."

A. That is correct. That $500,000 was in Mr. Keeshin's original proposal also.

Q. I didn't ask you that.

By Mr. McConnell: And I move to strike it out as not responsive to any question I asked.

By the Court: I will overrule the objection. The question addressed was Parmelee suggesting it, the only one suggesting the $500,000.

By Mr. McConnell: In that meeting, yes.

By the Court: He added to it, in Keeshin's original offer, that it contained the $500,000.

By Mr. McConnell:

Q. Is there anything in the memorandum which
1634 I showed you that mentions Mr. Keeshin suggesting $500,000 for new equipment?

A. Not that Mr. Nelson prepared.

Q. There isn't, is there?

A. No.

Q. You have testified it accurately sets forth what occurred at the meeting?

A. That is correct.

Q. All right.

I will show you a document which has been marked for identification as Plaintiff's Exhibit No. 35, which purports to be written by Mr. Coleman, passenger traffic manager under date of September 8, 1954.

I ask you if you have ever seen that document before.

A. No, sir.

1635 By Mr. Thompson: Did you say defendants'?

By Mr. McConnell: I didn't.

By Mr. Thompson: I am sorry; I misunderstood.

By the Court: He said plaintiff's.

By the Witness:

A. No, sir.

By Mr. McConnell:

Q. I show you a document which is marked for identification as Plaintiff's Exhibit No. 24.

By Mr. Freeman: It has been received. It is in evidence.
By Mr. McConnell:

Q. (Continuing) Which is in evidence, which purports to be a meeting of January 5, 1955. I ask you if you can identify the handwriting on that memorandum?

A. I cannot, and it is not mine.

Q. This is on the letterhead of the Baltimore and Ohio Railroad Company, and it professes to be a meeting of January 5, 1955, and it is in evidence, and it came out of your company's files.

1636 Who was sitting on the committee at that time representing your company?

A. What period?

Q. January 5, 1955, at the meeting of January 5, 1955.

A. I presume it was Mr. Nelson. I presume it would be.

Q. Isn't that his handwriting?

A. I don't know. You will have to ask Mr. Nelson. I really can't tell you whose handwriting that is. If I knew, I would say, but I couldn't say that is Mr. Nelson's handwriting.

Q. This note from your representative at that meeting, which comes out of your files and introduced in evidence says this:

"J. L. Keeshin proposal not sufficient decrease from present cost to warrant change from Parmelee Company."

There never was a change in Mr. Keeshin's proposal as to the rate after December 15, except for that little modification that you showed me?

A. The modification covered the actual rate, which was January 15.

1637 By Mr. Thompson: If the Court please, we have over this a half dozen times, and I object to it.

By Mr. McConnell: I have not been over it a half dozen times.

By Mr. McConnell:

Q. I am pointing out that with the Keeshin proposal before the representatives of the Baltimore and Ohio and with not even having seen the Parmelee proposal at that date, he made this comment.

Did you ever see this before?

A. I never saw that memorandum, and I never heard the comment.

1638 Q. When you got interested in this meeting, did you go back and look at the files to see what was in them?

A. No, I did not.

Q. You didn't go and see what other people had said about this matter?

A. I became interested when we got a definite proposal.

Q. Did you ever go back to the files to see what anybody had said about it who had been dealing with the committee?

A. No, I did not.

Q. You never asked Nelson what he had written or—

A. I did not.

Q. (Continuing) —or suggested or recommended?

A. I did not.

Q. Now you attended this meeting of June 3rd, you said in your direct examination.

A. I did.

Q. Did Mr. Keeshin at that meeting tell you that he had purchased fifty 6-passenger Ford station wagons, ten 8-passenger Ford station wagons, two station wagons to handle remains, and forty 20-foot trailers, 25 tractors?

1639 A. He said he had ordered it in the face of the pending steel strike.

Q. At that time he had not been awarded any contract?

A. That is correct.

Q. Had you talked to any other railroads about what their vote was going to be in this matter prior to this June 3rd meeting?

A. No one, no other railroad passenger traffic officer.

Q. You never talked to Mr. Baird of the New York Central?

A. Not regarding his vote. My talk with Mr. Baird was that this matter had reached the point where the passenger traffic managers ought to get together and settle it once and for all and know where they were going. That was my conversation with Mr. Baird.

Q. Where did you have that conversation?

A. The memorandum will show. It was in New York.

Q. Where was it, and then?

A. The date I wouldn't know, and it was in his office in New York.

Q. Was it prior to the May 19 meeting?

A. It certainly was. I think it was, anyhow. I have got to see the memorandum to remember the date.

1640 This is five years ago.

Q. Did you suggest to him at that time that you ought to make a contract with Keeshin?

A. I never discussed either one of the proponents with Mr. Baird at any time. I discussed the necessity of the general passenger business of these railroads getting together and deciding on what they should do about the transfer arrangements. That was as far as I ever discussed it.

Q. Is that why we had the committee augmented by these other people?

A. I asked Mr. Baird if he was going to be at the meeting, and he said he was. He told me he was going to be there.

Q. Did you talk to anybody else from any other railroad?

A. No other passenger traffic manager that I discussed that question with.

Q. He was the only one?

A. That is correct.

Q. Did you ask him to talk with anybody about it?

A. I did not. I didn't suggest that. I told him that there was a meeting in Chicago of the American
1641 Association of Passenger Traffic Officers the latter part of the month, of which I am chairman of the advisory board, if I can put that in, and I am past president, and he was president, and I said, "We ought to talk to these passenger traffic managers and get them to agree to attend these meetings and settle this question."

That is what I said to Mr. Baird.

1642 Q. All right. Now did you talk to Mr. Simpson, who was the president of your railroad, about this matter?

A. Several times.

Q. When did Mr. Simpson get interested in the matter?

A. He was interested in it in 1954, very much so.

Q. When did he first talk to you about it?

A. All through 1954. I wouldn't remember the first time.

Q. Wasn't the first time he asked you to get interested in April of 1955?

A. That is not a fact.

Q. Did he ask that you report to him on the matter in 1955?

A. Yes, he did.

Q. April 11th, to be exact?

A. No.

Q. When?

A. April 4.

Q. You wrote a report or you got him a report on April 11, didn't you?

A. I didn't write a report. I had it prepared.

Q. On April 11?

1643 A. No, it was written during the week and dated on April 11.

Q. All right. When did it get to Mr. Simpson?

A. When I got back to Baltimore on the 11th, and I place that date because it was following Easter.

Q. Prior to that time you hadn't had any active connection with this matter at all, had you?

A. What do you mean by active?

Q. Well, you hadn't been reading any of the memoranda on it?

A. Sure, I read the memoranda that came across my desk there.

Q. You just told us you didn't read this memorandum to Mr. Nelson?

A. I didn't see it. It was never sent to me. That memorandum was never sent to me.

Q. And you never went to the files to find any memorandum?

A. I wouldn't come to Chicago and look through their files to see what the arrangements were.

Q. You came out here how often, two or three times a month?

A. No, twice a month, sometimes three times.

Q. Yes, and you never made any recommendation

1644 that any general passenger traffic agents get interested in this matter prior to this meeting of May 19, did you?

A. Until after the proposals were received, then I thought it was time for the passenger traffic officers to make a decision and get together and settle it, yes. I talked to Mr. Baird. He is the only one.

Q. That was the May 19 meeting?

A. May 19, yes. I don't know when I talked to Mr. Baird if a date had been set for the meeting. I am not positive.

Q. Did you talk to anybody about this after the May 19 meeting and between the May 19 meeting and the June 3rd meeting?

A. I did not. No one knew until I arrived in Chicago on June 3rd what I was going to do.

Q. And you didn't know what anybody else was going to do, is that right?

A. I knew what my interest was.

Q. You didn't know what anybody else was going to do?

A. I didn't ask what they were going to do.

Q. I didn't ask you that.

1645 A. If I didn't ask them, how could I know?

Q. I just asked you a simple question. Did you?

A. I did not. I did not.

Q. Did you know that there was a split in the committee of six at the meeting of May 19?

A. At that time I did not.

Q. When did you find that out?

A. I heard it in the courtroom.

Q. That is the only time you ever knew about it?

A. That is the only time I ever heard of it.

Q. Was there any discussion in the May 19 meeting by Mr. Keeshin when he appeared there in the morning about financial difficulties that he had had in the trucking business?

1646 By Mr. Thompson: We object to that as immaterial to any issue in this case.

By Mr. Meserow: Your Honor, I object to it because it is based upon a statement that is not true. There is no showing in this evidence of financial difficulties.

By the Court: The question is did you ever hear —

By Mr. McConnell: I asked if he heard of any such difficulties.

By the Court: Read the question, please.

(Whereupon the question was read as above recorded.)

By the Witness:

A. No, sir, that I can recall. Maybe he mentioned something about his financial standing and credit. I think he mentioned something like that, but I can't remember exactly what he said.

By Mr. McConnell:

Q. Did he say anything about his having financial difficulties?

A. I don't know whether he used the word "financial" or his financial conditions. He made have said "financial condition." I don't know. I knew nothing about his 1647 financial condition.

Q. You didn't know anything about it or you didn't know anything about any difficulties your railroad had had with one of his companies?

A. Never in my life until I heard about it.

Q. When did you hear about that?

A. I think it came out —

By Mr. Thompson: We object to all of this as immaterial. It has nothing to do —

By the Court: Objection sustained.

By Mr. Meserow: Just a minute now.

If your Honor please, I see what exhibit he has got here, and I am going to object to his even asking his question. Mr. Freeman tried to do it before, and it is entirely beyond the scope of public injury, and all he is doing it for is to poison the minds of the jury again. I am objecting to it.

By the Court: I haven't any question pending before me.

By Mr. McConnell: Anything that has anything to do with Mr. Keeshin or what this lawsuit is about is
1648 poisoning the minds of the jury. I am trying to show what person they are dealing with.

By Mr. McConnell:

Q. I show you a document which has been marked for identification Plaintiff's Exhibit 37, and ask you if you know anything about this proceeding or this petition which is apparently filed on behalf of your railroad.

A. I can say under oath I know nothing about it whatsoever.

Q. Did you ever make any investigation of his financial situation?

A. On behalf of the Baltimore and Ohio?

Q. Yes.

A. No, I didn't. But I think one of the other railroads did.

Q. I am asking whether you did.

A. I didn't personally, but one of the other railroads did.

Q. All right. Did your railroad make any investigation of his financial condition or standing?

A. In regard to the contract?

Q. Yes.

A. No, they wouldn't have to.

1649 Q. I didn't ask you whether they had to. I asked you whether they did.

A. Not that I know of.

Q. You were greatly concerned about this profit and loss statement, you told us.

A. I certainly was.

Q. Did you ever get any profit and loss statement from Mr. Keeshin in the first two years of this contract?

A. Never got one in my life that shows a loss and profit for transferring passengers through Chicago.

By Mr. Thompson: Now, just read that question.—

By Mr. McConnell:

Q. One in your life for what?

A. I mean, I have never seen one. Never received one that shows a profit and loss for transferring passengers through Chicago.

By Mr. McConnell: May we have a little recess?

By the Court: Yes.

(Whereupon the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

1650 By the Court: Do we have any idea of how long this will take?

By Mr. McConnell: I think I am almost through.

By the Court: I mean the whole thing. Tomorrow is Friday. We can work all day tomorrow, and finish it? If so, I will not say anything about it. I want to help you work it out so we can wind it up. I don't mean to rush it. I am prepared for Monday. The jury is held over for a week.

By Mr. Thompson: Let's not say anything about it and let Nature take its course. If we are through tomorrow, we are through.

By the Court: I would like to know for my own information.

By Mr. McConnell: We have a little rebuttal, you know.

By the Court: All right.

By Mr. Thompson: Just a moment. I just want nothing said about it, before the jury, as to when we are going to get done.

By the Court: Of course not.

By Mr. Thompson: And I don't know when we are going to get done and nobody else does as far as I know.

I just want to say that Mr. Whittington wants
1651 to get this 4:00 o'clock train back to Baltimore. He has an appointment with his president tomorrow. I assume we will be through before then?

By Mr. McConnell: I think so, Judge.

May I ask this — this hasn't anything to do with your position — but I have a hearing which was postponed before Judge Adesko at 4:00 o'clock tomorrow afternoon, and I wonder if I could be excused to attend that McDonald case?

By the Court: I will say this to you, Mr. McConnell, if we are going to hold over anyhow, I have no objection to recessing earlier. I want to cooperate as much as I can.

By Mr. McConnell: We have rebuttal.

By the Court: If it is a matter of holding over anyway, I have no objection to letting it go at that time.

(Whereupon a brief recess was taken.)

1652 By the Court: Bring out the jury.

(And thereupon the following further proceedings continued in the presence and hearing of the jury:)

By the Court: Proceed, please.

By Mr. McConnell:

Q. Mr. Whittington, you told us on April 4 that Mr. Simpson, the president of your company, asked you to bring him up to date on the transfer matter, is that correct?

A. That is correct.

Q. What did you do pursuant to that request?

A. I sent for Mr. Holter who handled contract matters and asked him would he make a memorandum up for the

president, to bring him up to date of what the status was of the Parmelee matter.

Q. After Mr. Holter had prepared that memorandum — let me ask you this, first: Did Mr. Holter prepare such a memorandum?

A. He did.

Q. And after Mr. Holter prepared it, did you review it?

1653 A. I reviewed it, yes. I read it anyhow. I didn't study it. I read it.

Q. You knew the purpose of it was to give Mr. Simpson all the material facts he needed to know what this terminal situation or transfer situation was, isn't that right?

A. That is correct.

Q. I will show you a document which is in evidence here, produced from your files and identified as Plaintiff's Exhibit No. 16, and ask you whether or not that is the memorandum which Mr. Holter prepared and which you reviewed and which was turned over to Mr. Simpson.

A. Forwarded to him through our vice president.

Q. Well, that is just getting it to him, isn't that right?

A. That is right.

Q. You have to hand it from one person to another?

A. Protocol.

Q. Protocol says it has to go to the vice president and then to the president?

A. That is right.

Q. You couldn't take it in yourself and give it to him?

A. I could if I wanted to, but as long as the vice
1654 president was there, that is the thing to do, because I work for him.

Q. But it got there?

A. That is right.

Q. And it got there after you reviewed it?

A. That is right.

Q. Let me see it a moment, and then I want to ask you a few questions about it.

At the time this was prepared, the Keeshin proposal had been received, had it not?

A. It had.

Q. Is there any mention made of it in this report?

A. I don't know. I didn't read it again. I didn't read it through, or I would know. I think it refers to getting other people interested in it. I think it says something like that, but I didn't review it, the complete file or know what is in it.

Q. All right. I want to call your attention to this which was in the report, on Page 3 of that exhibit, the last full paragraph:

"One suggestion made from time to time is that we discontinue all passenger transfer and let the passenger use regular taxicabs at their own expense,
1655 but arrange for separate transfer of checked baggage. The difficulty with this is that many of the transfers are for close connections, and during inclement weather taxicab service just would not be available, while today Parmelee assumes responsibility for this service and generally does a good job."

Did you read that before it went to your president?

A. Yes, I read it.

1656 Q. You didn't take any exception to that statement?

A. The word "generally" could mean — "generally" doesn't mean it is perfect.

Q. Yes, I know, but I just asked you whether or not you took any exception to it at that time.

A. No.

Q. You didn't say that "generally" is too broad a word or may mean a number of other things, and "you ought to be more specific"?

A. No.

Q. You weren't in any lawsuit at that time, were you?

By Mr. Thompson: We object to that. It is improper.

By the Court: Read the question, please.

(Whereupon the record was read as above recorded.)

By the Court: Objection sustained. It may be stricken.

By Mr. McConnell:

Q. Now, referring to Parmelee, this report says:

"They say they will be required to spend about $500,000 over a period from six months to a year and 1657 can only justify this expenditure if they have a five-year contract with the railroads."

Did you accept that as a true statement?

A. Yes, I accepted it. I think that is in the Parmelee proposal.

Q. And you were bringing to the attention at that time — you were attempting to, at least, everything you thought was material for Mr. Simpson to know in dealing with this matter, is that right?

A. Yes.

Q. And you didn't say one single word in that report about any labor troubles with Parmelee, did you?

A. Not a word.

Q. And you didn't say one single word about a profit and loss statement, did you?

A. Not a word.

Q. And you didn't say one single word about a strike in 1950, did you?

A. He didn't ask for that.

Q. You didn't say it either, did you?

A. No, but he didn't ask for that.

Q. And you didn't say it?

A. I didn't prepare the memorandum. Mr. Holter didn't say it, and I didn't take exception to what he said.

Q. And you didn't add anything?

1658 A. And I didn't add anything.

Q. In paragraph 2 there is a statement of the Parmelee rate increases, and I ask you to look at that and tell us whether that is a correct statement of the Parmelee rate increases up to that time.

A. Shall I read it?

Q. Just read it to yourself.

A. Oh, I thought you wanted me to read it aloud. I have read it. I read the second paragraph.

Q. Is that a correct statement of the rate increases?

A. This doesn't say anything about the rate increases, the second paragraph. You asked me to read the second paragraph, and that is what I read.

Q. Well, is that a paragraph?

A. It is a heading.

Q. And that is a paragraph?

A. All right; I will read that one.

By Mr. Thompson: What is so funny?

By the Witness:

A. Yes, that has to do with the rate increases.

By Mr. McConnell:

Q. Is it accurate? That is what I want to find out.

A. Without any dates here—that is the progress of the increases, except it didn't put in the $1.05, and

1659 it doesn't have that, the $1.05 in it, or the $1.12½ in it. Those two things are omitted, and it doesn't have the dates as to when they were increased.

Q. But you approved it when it went up to your president?

A. Yes; that was a general picture of it for our president. He could get what he wanted to know from that.

Q. All right.

Now, let's go to another question, and I will try to get through so you can catch your train, if I can.

How many times did you ride on this Keeshin equipment?

A. Not over once or twice.

Q. In the four or five years of the contract?

A. That is correct.

Q. When was it?

A. I think it was in the last two or three years—in the last two years. I looked at it and got in it and rode it.

1660 Q. This air conditioning is not a built-in air conditioning, is it?

A. I don't know the mechanism of it.

Q. It is just a little box up in front?

A. I don't know the mechanism. I know it was air conditioned.

Q. You are not an expert in air conditioning, I take it?

A. That is correct.

Q. You never saw any of the twelve-passenger limousines that Parmelee proposed to put in—

A. No, I didn't.

Q. —because they didn't get the contract?

A. No, I didn't.

Q. You spoke of the pretty girls that met the train, the stewardesses. Did Parmelee have somebody meeting trains and telling people where to go?

A. They had attendants.

Q. Well, they were men?

A. That is right.

Q. They weren't as attractive as pretty girls, but they gave information of where to go?

A. That is correct.

Q. And that was their function, wasn't it?

1661 A. That is right.

Q. And they had them there?

A. They had the men there to load—they had a supervisor there to load their limousines.

Q. You say Parmelee had telephone service to get their cabs when they wanted to go?

A. That is what Mr. Markin said. He said that was the system they had, and it was satisfactory.

Q. According to your memorandum the service was satisfactory on April 11 of 1955, wasn't it?

A. In 1955, yes, but I know many times it wasn't.

Q. You didn't put that in the memorandum, though?

A. No.

By Mr. McConnell: That is all I have to ask him.

Redirect Examination by Mr. Thompson.

Q. I will ask a few questions and see if I can get you to your train, Mr. Whittington.

Just before the recess the question was put to you as to whether or not you had seen any profit and loss standards of the Keeshin people.

A. Parmelee—he said Parmelee.

1662 Q. Well, anyway, what is your answer?

A. My answer is that I have never seen a Parmelee profit and loss, but I have seen the Keeshin profit and loss for the last four years.

Q. All right; I think you misspoke yourself before.

A. I thought Mr. McConnell said—

1663 By Mr. Thompson: I will ask to have this document marked Defendants' Exhibit 29 for identification.

(Thereupon the said document was marked Defendants' Exhibit 29 for identification.)

By Mr. Thompson:

Q. Looking at Defendants' Exhibit 29 for identification, is that the memorandum that you made and the conversation you had with Mr. Baird in April 1955?

A. Yes, sir, that is it.

Q. What is the date of it?

A. The date of it is April 21, 1955.

Q. Was that memorandum made by you after you got back from New York?

A. I can't tell whether it was made after I got back. I dictated probably to my secretary on the train, and put it in as a matter of record in the file.

Q. Is it a regular practice of yours to make memorandum for the file?

A. Yes, sir.

Q. Is it in the ordinary course of business that
1664 you have such memorandum made for the file?

A. Yes, sir.

Q. And this is part of the file of the Baltimore and Ohio Railroad Company?

A. That is correct, sir.

Q. Looking at this document here which you couldn't identify, but which I will agree with counsel was identified by Mr. Nelson as some notes made by him, is that any memorandum for the file made in the regular form and regular course of business?

A. We would never make it in Baltimore, and I don't know when I was in Chicago that we made such memorandums, unless we typed it out and put it in the file.

Q. That is dated January 5, 1955. Did you have any bids at that time other than the Keeshin bid of December 15, 1954?

A. We did not.

Q. There was nothing to compare the Keeshin bid with then?

Q. And there was no Parmelee bid until the middle of March 1955?

A. That is correct, sir.

1665 Q. I call your attention to Plaintiff's Exhibit 25. You have already said that so far as it goes, it is

an accurate statement. Is that supposed to be or does it purport to be a complete transcript of all that happened at this meeting of May 19, 1955?

A. It is not this memorandum that was prepared following the meeting. It is not a transcript of the meeting.

Q. Now then, under the words "J. L. Keeshin", which is the third paragraph on the first page, is there a reference to the Keeshin written proposal incorporated in this memorandum?

A. Yes, sir.

Q. And that written proposal of Mr. Keeshin said it would cost more than $500,000 to provide the equipment he contemplated providing?

A. Yes.

By Mr. McConnell: I object to counsel testifying to what the written agreement said.

By the Witness: I testified to that previously.

By Mr. Thompson: The written agreement is in 1666 evidence.

By Mr. McConnell: I know. I just don't like your version of it, that is all.

By Mr. Thompson: Of course, you wouldn't.

By Mr. McConnell: I just like to stick to the evidence and not your editorialized comments.

By Mr. Thompson:

Q. Anyway, it was in Mr. Keeshin's original bid, wasn't it which is right in front of you?

A. Yes, sir.

Q. Now then, calling your attention to what you were not shown when you were being examined about Plaintiff's Exhibit 30, which is the memorandum signed with your name in typewriting on May 20, 1955, I show you Defendants' Exhibit 29. Is that the memorandum to which you were referring as having come from Mr. Nelson to you?

A. That is the memorandum.

Q. And is the content of the one the same as the content of the other?

A. It is identical with the last paragraph being the P.S. on Mr. Nelson's memorandum.

Q. Moved up into the body of your memorandum?

A. That is correct.

1667 Q. All right. Then the notes here made in red, so it is said, though it isn't red here, but anyway, the last two figures, Keeshin, $1.25 in 1958 and $1.27 in 1959.

Now is there a footnote to those two figures showing that it is nothing but a computation?

A. Down at the bottom here?

Q. No.

A. Oh, that asterisk says "Based on possible ten cent wage increase," with an asterisk which says "On those two years it is based on possible ten cent wage increase."

Q. In other words, you were making a memorandum to yourself?

A. For my own reference in the future, yes.

Q. And that if there was a ten cent wage increase in each year, it would come to those figures?

A. That is correct.

By Mr. Thompson: We had marked on the identification of the document by Mr. Anderson, when he was on the stand in our cross examination of him, Defendants' Exhibit 1, which is the memorandum from Anderson to Duffy of April 27, 1954.

1668 We offer it in evidence.

By Mr. McConnell: I have no objection.

By the Court: It is received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 1.)

By Mr. Thompson: I offer in evidence Defendants' Exhibit 29, which is a memorandum of the Whittington-Baird conference on April 21, 1955.

By Mr. McConnell: No objection to that.

By the Court: No objection?

By Mr. McConnell: No objection, your Honor.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 29.)

By Mr. Thompson: I offer in evidence certified copy of complaint in the Superior Court of Cook County, which speaks for itself.

By Mr. McConnell: I object to that on this issue.

By Mr. Thompson: I will ask to have it marked 1669 as Defendants' Exhibit 30 for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 30 for identification.)

By the Court: I will reserve my ruling. I want to hear a little more about it. I don't know what it is.

By Mr. Thompson: You can look at it yourself, your Honor.

By the Court: Yes. I will reserve my ruling. I don't know what that is.

By Mr. Thompson: That is all.

By Mr. McConnell: I have a couple of questions.

Recross Examination by Mr. McConnell.

Q. Judge Thompson has referred to your note here based on possible ten cent wage increase with the increases on the Keeshin coupon rate. Now in this memorandum, the Keeshin proposal based on that assumption, was $1.27 for the year July 1st, 1959 to June 30, 1960. Do you

know what the present coupon rate is?

1670 A. Well, it depends on the date that is there. I guess it is $1.67 now, if it is the last year. I wouldn't know whether that is the last year of the contract.

Q. $1.27?

A. $1.27.

Q. It is $1.27, isn't it?

A. If that is the last year, yes.

Q. So that the figure that is shown here in your memorandum is actually the figure you had to pay?

A. We had to pay based on the wage increase that was granted.

1671 Q. Now I want to call your attention to the contract, which was signed between the Keeshin Company and the twenty-one railroads, and ask you to tell us, if you will, what the rate for the coupon is for the fourth and the fifth year in the Keeshin contract?

A. $1.25 and $1.27.

Q. So when you told us this morning that those rates were not in the contract, you were mistaken, is that right?

A. No, I wasn't mistaken.

Q. Didn't you say that those rates were not included in the contract?

A. We made a contract for the three years on a definite commitment from him of $1.20, $1.22 and $1.23, and a further commitment that if he would have to grant an increase in the fourth and fifth years, he would make his rate no higher than one cent for every five cents he had to give up, to a maximum of ten cents, which would have been two cents for the fourth and two cents more for the fifth.

Q. That is what it says in the contract, doesn't it?

A. That is what he did.

1672 Q. $1.25 and $1.27?

A. That is correct.

By Mr. McConnell: I have no further questions.

Redirect Examination by Mr. Thompson.

Q. At the time this contract was finally executed on September 19, 1955, do you know that Mr. Keeshin by that time had a six-year contract with his labor so he knew what the figure was going to be?

A. That is correct.

By Mr. Thompson: That is all.

By Mr. McConnell: I have no further questions.

(Witness excused.)

By Mr. Meserow: I will call Mr. Bayr.

EDWARD BAYR, called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Meserow.

Q. What is your name, please?

1673 A. Edward Bayr.

Q. And your address, Mr. Bayr?

A. 400 West Kenzie Street.

Q. What is your present occupation?

A. General manager, Railroad Transfer Service, Inc.

Q. And that is the company owned by Mr. Keeshin?

A. That is right.

Q. How long have you held that position?

A. Since May 1st, 1958.

Q. When did you first come with the Railroad Transfer Service?

A. Two weeks prior to October 1st, 1955.

Q. And October 1st, 1955, is the date that they started their operations of interstation transfer?

A. That is correct.

Q. Now prior to that time, prior to the two weeks in September before you started work for the Railroad Transfer Service, where were you employed?

A. Parmelee Transportation Company.

Q. In what capacity?

A. Superintendent.

Q. How long had you been employed by Parmelee Transportation Company?

1674 A. Twenty-seven years.

Q. In what various capacities?

A. Eight years in the office; six years as a driver; eight years as a passenger agent; and five years as a superintendent.

Q. And during your employment with Parmelee Transportation Company, you had on occasion to drive, inspect and observe their equipment, didn't you?

A. That is true.

Q. Generally what were the types of equipment that they used in 1955 for interstation transfer?

A. Well, they had a cab type vehicle, I believe, that was a seven-passenger car and they also had a twelve-passenger vehicle.

Q. In your capacity as general manager of Railroad Transfer Service do you purchase the equipment for Railroad Transfer Service?

A. Yes, I do.

Q. You are familiar with their type of equipment that they have?

A. That is true.

Q. Now originally in the station transfer, they used station wagons, is that correct?

A. Correct.

1675 Q. What make?

A. Ford.

Q. Were they ordinary station wagons that you would purchase in a dealer's place of business, or were they specially built?

A. They were specially built, all heavy duty equipment; heavy duty axles and clutch, automatic transmissions, fronts, everything that we could possibly have heavy duty on these vehicles, we did.

1676 Q. In other words, they were specially built for Railroad Transfer Service, is that correct?

A. That is correct.

Q. I show you what I will have marked as Defendants' Exhibit No. 31.

(Thereupon said document was marked as Defendants' Exhibit No. 31 for identification.)

By Mr. Meserow:

Q. And I ask you what this is.

A. This is the photo of our units loading at the Union Station. That shows one of the new Chevrolets and one of our new Plymouth conversions.

Q. Isn't this the original station wagon that you used?

A. No, it is not the original station wagon.

Q. What is this?

A. A Plymouth we converted last year.

Q. Does that have a glass partition in between the baggage compartment and the seating of the passengers?

A. Yes, it does.

Q. The original station wagons, did they have a glass compartment?

A. Not the original.

1677 Q. When did you install or have installed the glass compartment?

By Mr. McConnell: That assumes that he did install them.

By Mr. Meserow:

Q. Were there any installed in the original station wagons?

A. Not glass partitions, no.

Q. What kind of partitions?

A. There was a metal partition that kept the baggage from shifting forward onto the passengers.

Q. In the summertime did that keep the cold air from the passenger compartment?

A. You talk about the summertime now. In the summertime we started to put these partitions into these vehicles, in the summer of 1956.

Q. In the summer of 1956?

A. That is right.

Q. When you had them completed, did that keep the cool air in the air conditioned passenger compartment in there and did not let it get out to the baggage compartment?

A. That is right.

Q. And in the cold air it kept the cold air out?

1678 A. That is right.

Back with these partitions here around November or December of 1955 we started to order out the partitions for the units we had in service.

Q. Mr. Bayr, is it true that all of the passenger transfer equipment of Railroad Transfer Service that you used from October 1, 1955 to date has been air conditioned?

A. That is true.

Q. And continuously air conditioned?

A. That is true.

Q. And they all have two-way radio dispatch equipment?

A. All two-way radio dispatch.

Q. And that includes the tractors for the transferring of baggage, is that right?

A. Yes.

Q. They are all heated for winter travel, aren't they?

A. Yes.

By Mr. Meserow: Mark these as Defendants' Exhibits 32 through 41, for identification.

(Thereupon said documents were marked, respectively, Defendants' Exhibits Nos. 32 through 41, both inclusive, for identification.)

1679 By Mr. Meserow:

Q. I show you a picture marked as Defendants' Exhibit No. 32 and ask you what that is.

A. This is a Ford station wagon that has been converted from a six to a twelve passenger limousine.

1680 Q. Is this the air conditioning unit on top?

A. Correct. That is not the air conditioning unit. The unit itself is inside the car. This is a roof condenser.

Q. Are these vehicles in operation at the present time?

A. Yes, some of them are.

Q. By the way, Mr. Bayr, have you replaced your equipment in the last, since October 1, 1955, within a thirty-month period with new equipment?

A. We have replaced the equipment. I think we first started to replace in the early part of 1956. We ordered some of these station wagons to be converted to twelve-passenger, and then we ordered equipment in 1957, again in 1958.

We never waited for the thirty-month period to replace equipment. We are constantly replacing equipment with better equipment, more modernly designed.

Q. Did you ever use Volkswagens in the beginning of your operation?

A. Yes, we did.

Q. How long did you use them?

A. I think for probably two and a half months.

1681 Q. Did you find them unsatisfactory?

A. We did as far as air conditioning. There was no way to air condition these units properly.

Q. They were used in the cool months of the year after October to the end of December?

A. Yes, and we disposed of them in the month of December.

Q. What was the average mileage on these Volkswagens when you disposed of them, that is per vehicle?

A. I would say it would average four or five hundred miles.

Q. Not more?

A. Not more.

Q. Did you ever use school buses?

A. We never used school buses.

Q. I will show you Defendants' Exhibit No. 33 and ask you what that is.

A. That is a photo of a 21-passenger coachette made by the Ford Company, air conditioned, with a two-way radio, baggage bulkhead in the back.

Q. Is that used by your company at the present time?

A. Yes, it is.

Q. All right. I show you Defendants' Exhibit No.

1682 34 and ask you what that is.

A. This is a picture of our tractors and trailers now in use for the handling of baggage between stations and city delivery.

Q. Are those radio-dispatched?

A. These are radio-dispatched, two-way radio, fully equipped.

Q. I show you Defendants' Exhibit No. 35 and ask you what that is.

A. This is a picture of a panel truck we use for city delivery with an automatic tailgate lift, with a two-way radio, and we have two of these in our service.

Q. I show you Defendants' Exhibit No. 36 and ask you what that is a picture of.

A. This is a group photo taken on the lake front showing all the different types of equipment we had. It shows the six-passenger, the twelve-passenger, the twenty-one passenger coachette, the panel truck and the tractor and trailer.

Q. I show you Defendants' Exhibit No. 37 and ask you where that was taken.

A. This picture was taken at 1214 West Monroe Street, our garage. It shows all the latest types of equip-
1683 ment we have, our new fifteen-passenger Chevrolets, fully equipped, with radio, heaters, air conditioned and also a new twenty-five passenger Chevrolet bus, plus our coachettes.

Q. Mr. Bayr,—

By Mr. McConnell: I am sure all of that equipment isn't on that picture, and I move to strike out his description of the equipment. The question is what the picture showed.

By Mr. Meserow:

Q. Just tell what this picture shows.

A. This picture shows equipment in our garage at 1214 West Monroe.

Q. Mr. Bayr, I notice on one of these vehicles the Civil Defense insignia. Is the Civil Defense insignia on all of your vehicles?

A. Yes, all of our vehicles have the Civil Defense insignia.

1684 Q. Is it true that the Railroad Transfer Service has an agreement with the Illinois Civil Defense Director?

A. Yes.

Q. Whereby in the event of an emergency all of the equipment and the drivers are made available to the Civil Defense?

A. All of our personnel and equipment is pledged to Civil Defense.

Q. In the event of an emergency?

A. In the event of a national emergency, that is right.

Q. I show you Defendants' Exhibit No. 38 and ask you what that is.

A. This is a picture of our Jeep service truck with the snowplow attached, two-way radio, and so forth.

Q. Do you have occasion to plow snow in the wintertime?

A. Yes, we do.

Q. Where?

A. Around the depots, the various depots.

Q. What else do you do at the depots to alleviate the through traffic?

A. In what way?

1685 Q. I mean do you do anything else besides plow there when it is necessary?

A. Yes, we sprinkle salt around, and so forth.

Q. You have done that?

A. Yes.

Q. In the heavy snows of last winter, how much salt did you sprinkle, would you say?

By Mr. McConnell: I don't think we have any controversy about sprinkling salt in this case.

By the Court: Yes, sustained.

By Mr. Meserow:

Q. I show you Defendants' Exhibit No. 39 and I ask you what that is.

A. This is a picture showing one of our units loading at Dearborn Station, one of our new Chevrolet units.

Q. Is that a new unit?

A. Yes.

Q. How many passengers?

A. Fifteen passengers.

Q. Does that have automatic transmission?

A. Yes, it does.

Q. All of your vehicles?

A. All of our vehicles have automatic transmis-
1686 sion, power brakes, power steering.

Q. And two-way radio?

A. And the air conditioning, yes.

Q. Does Railroad Transfer Service employ agents and stewardesses at the stations?

A. Yes, they do.

Q. About how many agents, male agents do you have at the stations?

A. At the present time?

Q. Yes.

A. Seventeen.

Q. On October 1, 1955 how many stewardesses did you employ at the beginning of the operation?

A. Fifteen.

Q. Those are female stewardesses?

A. Female stewardesses, yes.

By Mr. McConnell: I never heard of a male stewardess.

By Mr. Meserow:

Q. What are the duties of the agents at the stations?

A. They assist the passengers and assist in loading, collecting coupons, issuing boarding passes, dispatching the units.

Q. What are the duties of the stewardesses, the
1687 female ones?

A. We have booths at the various depots which these girls attend, and the passengers come up to them

at the depots and present their through tickets and they detach the coupon which is good for the ride from station to station and issue a white boarding pass and direct the passengers to where our vehicles load and assist the people in whichever way they can, whatever way they can.

Q. Do you, as general manager, know of any particular instances in which some of these stewardesses did some outstanding service for the traveling public?

A. We have many letters of commendation.

1688 Q. I mean, do you know of any particular instances where any of the stewardesses have performed some such service?

A. Yes, our stewardesses have helped people cross town, have helped people with children, people that have been injured in one way or another, either in our vehicles or on the premises of the depots, and they have assisted them.

By Mr. McConnell: I would like to hear about that incident where they were injured in his vehicle.

By Mr. Meserow: You go into it if you want.

By Mr. Meserow:

Q. Did you ever have occasion to call, to have these stewardesses or some of your agents call pulmotor squads?

A. Yes.

Q. Were they called by what, your radio?

A. Our two-way radio.

Q. Do you also have the stewardesses or agents arranging for wheel chairs for infirm people at the receiving station?

A. Via two-way radio, yes.

1689 Q. And do you also cooperate with the Travelers' Aid?

Q. I will show you Defendants' Exhibit No. 40 and ask you if that is a—or rather, what that is.

A. This was taken at the Illinois Central station, and it shows one of our stewardesses working at the booth there to provide boarding passes for the passengers.

Q. I show you Defendants' Exhibit No. 41 and ask you what that is.

A. This is a picture of our stewardesses taken in the month of October of 1955 showing some of the stewardesses we employ.

Q. They are all uniformed, aren't they?

A. All uniformed, yes.

Q. Mr. Bayr, these pictures of equipment that I have shown you, you assisted or directed and inspected and made examinations to determine whether or not these should be purchased, is that correct?

A. That is correct.

Q. And to whom would you report?

A. Mr. Keeshin.

Q. So that you are familiar with this type of 1690 vehicle, aren't you?

A. That is right.

Q. These are a true portrayal of the equipment that you had purchased and are now using in operation for the Railroad Transfer Service?

A. That is right.

By Mr. Meserow: I would like to offer in evidence at this time, if the Court please, for the inspection of the jury, the defendants' documents—

By the Court: Have counsel look at them first.

By Mr. Meserow: Defendants' Exhibits 31 to 41, both inclusive.

By Mr. McConnell: I am going to object to these. I want somebody to cross-examine. That is all. This man didn't take the pictures. We have no dates, and we didn't know when they were taken.

By the Court: You may cross-examine.

By Mr. McConnell: We can't cross-examine him. He didn't take the pictures. I want somebody who took them.

By the Court: He has testified they are true and
1691 correct as of the date they were taken, and that he is familiar with them.

By Mr. McConnell: We don't know when they were taken.

By the Court: You can ask him.

By Mr. McConnell: He doesn't know either, I don't imagine. He didn't take them. There has been no foundation laid for them, and I object.

By Mr. Meserow: He did testify as to the models of these vehicles.

By the Court: Objection overruled. They may be received in evidence.

(Said documents, so offered and received in evidence, were marked Defendants' Exhibits 31 through 41, inclusive.)

1692 By Mr. Meserow: May I show them to the jury, your Honor?

By the Court: Yes.

(Thereupon the exhibits were handed to the jury.)

By Mr. Meserow: I have no more questions on direct, your Honor.

By the Court: Do any other defendants have any questions? If not, you may cross examine.

1693 *Cross Examination by Mr. McConnell.*

Q. Do you know when these pictures were taken?

A. Some in 1955; some in 1956.

Q. Well, I am going to give you the batch of them and let you tell us by the exhibit numbers which were

taken in 1955 and which were taken in 1956.

A. Forty-one, 1955, that is my recollection—

Q. All right, let's start with 1941—

By Mr. Keating: Object to 1941. The witness didn't say that.

By the Court: He means Exhibit 41.

By Mr. McConnell:

Q. How many of these girls are still with your company?

A. Three out of the group shown there.

Q. Three of the eleven girls are still with the company?

A. That is right.

Q. And they are now four years older?

A. That is right.

Q. How about that cab or whatever it is? One of them sitting in the cab. Is that piece of equipment still with you?

A. I can't tell. I can't see the number. I doubt 1694 it.

By the Court: Can you hear back there? Speak a little louder, please.

By Mr. McConnell:

Q. Well, how much of that equipment—

By Mr. Thompson: Repeat the answer, please.

By Mr. McConnell: He said he doesn't know whether it is or isn't.

By the Witness: You can't see the vehicle. The vehicle is blocked out, all except one door.

By Mr. McConnell:

Q. So you don't know whether you still have got it?

A. I don't know what vehicle it is.

Q. You don't know whether you have still got it?

A. No, I don't.

Q. And you have got three of the girls in the picture?

A. That is right.

Q. And they are four years older. All right. Are the vehicles all four years older, too?

A. No, they are not.

Q. Well, which ones are four years older and 1695 which ones three?

A. This may be a 1955 vehicle that we turned in to the baggage department for the baggage sup[illegible]sor's use. That is why, when I say I dont know w[illegible] car number this is, because I don't know what car it is, period.

Q. It might be, but you don't know?

A. I don't know. We have one—

Q. That takes care of that vehicle, doesn't it?

A. Yes, it does.

By Mr. Mescrow: Speak a little louder, Mr. Bayr. We can't hear you.

By Mr. McConnell:

Q. Can you tell us, well, all those vehicles, the youngest of them is in 1956, isn't that right?

A. That is right.

Q. And you have got them yet? Are they still with your company?

A. We have one 1956 vehicle.

Q. So none of the rest of them are with you any more?

A. We don't use it in service. We haven't been using it in service.

Q. How many vehicles do you show you have 1696 got there by those pictures?

A. You mean year?

Q. How many? The number.

A. Oh, number.

Q. Let me get at it this way. You are not duplicating

them here, are you? You are not taking a picture of the same vehicle more than once?

A. No, we are not.

Q. So that each time you have a picture, it is a different vehicle?

A. Correct.

Q. But you have got them in two different years, 1955 and 1956?

A. 1955, 1956—some 1957's and '59's.

Q. Can you tell us how many of them you now have working for the company?

A. The vehicles?

Q. Yes, of those pictures.

A. We have fifty pieces of power—

Q. I didn't ask you that. I am asking you of the pictures that you produced here, how many of them are still in operation with the company?

A. I will look at the pictures again. I would say three.

1697 Q. Can you identify those by number? I mean exhibit number.

A. Exhibit 32, Exhibit 36.

Q. Let me see those two exhibits.

A. These wagons were discontinued. This wagon was discontinued—

By Mr. Thompson: Just a minute, please, Mr. Witness. We can't hear you. The jury wants to hear this.

By Mr. McConnell: I haven't asked him any question yet except to see the two exhibits, 36 and 33, is that it?

By the Witness: 32.

By Mr. McConnell:

Q. Exhibit 32 is a picture of two Ford station wagons?

A. That is right.

Q. And you have still got them?

A. No. You asked me--rephrase your original question, if you will, please.

Q. No, I am not rephrasing the original question. I asked you a question and you gave me an answer, and you said, of the pictures you had here, you said these three, or these two pictures represented all that equipment that you still have got in use.

1698 Now, do you want to change that answer?

A. Yes, I do. Exhibit 41 also, to the best of my knowledge, this unit is not in use. That would be the 1955 vehicle.

Q. I asked you which was still in use.

By Mr. Thompson: If the Court please, if he would let the witness take each document separately and quit this wholesale examination, then we would get some intelligent answers. He could say each one is in use—

By the Witness: Would it be better if I told the type of equipment we now have?

By Mr. McConnell: I think I have a right to examine the witness.

By the Court: You have a right to examine the witness.

By Mr. McConnell: I don't think I have to take directions from Judge Thompson.

By the Court: I think he identified those three pictures as being presently in use.

By Mr. McConnell: I understood that, and so did everybody else, except Judge Thompson.

By Mr. Meserow: Now the witness stated that they are not in use.

1699 By Mr. McConnell:

Q. Is that equipment in use?

A. To the best of my knowledge this equipment here, some of this equipment showing in this photo here—

By Mr. Thompson: What is the number, please?

By the Witness:

A. (Continuing) No. 36, the equipment shown in No. 32, and the equipment in 41 is not in use.

By Mr. McConnell:

Q. Not in use?

A. Right.

Q. All right.

Now the balance, is all the rest of the equipment in these pictures in use at the present time?

A. Yes.

Q. I show you a document marked for identification Defendants' Exhibit 37, and ask you to tell us, if you will, what that equipment is.

A. This shows a '59 Chevrolet, 15-passenger units; 25-passenger Chevrolet coachette; 21-passenger Ford coachette; a 1958 passenger Ford, 12-passenger unit.

In the background two straight trucks.

1700 Q. How many of the '59 Fords are there?

A. No '59 Fords. '59 Chevrolets.

Q. How many of the '59 Chevrolets?

A. There are five shown here.

Q. Do you know what they cost new?

A. Yes, I do.

Q. What do they cost new?

A. The complete unit, with air conditioning?

Q. What you have got there in your picture. I dont know what is in it.

A. $7,800, close. I will take a guess at $7,800, very close to it.

Q. Are you just guessing about this or do you know?

A. No, I am not guessing. It will run around $7,800.

Q. You have five of them?

A. That is right.

Q. What are the other makes?

A. Fords.

Q. How many Fords?

A. Well, we show here about ten or twelve Fords in the photo.

Q. Can't you count them?

A. It is pretty hard from the photo. The photo is taken from a distance.

1701 Q. Well, do you know how many you have?

A. Yes, I do.

Q. How many?

A. Eighteen.

Q. Eighteen of those Fords. What are they?

A. Twelve-passenger conversions, we call them.

Q. Conversions?

A. Conversions.

Q. What do they cost?

A. $5,800 apiece.

Q. What else have you got there?

A. Twenty-five passenger Chevrolet coachette.

Q. How many have you got of them?

A. One.

Q. One?

A. Just one.

Q. How much did that cost?

A. I would say in the neighborhood of $9,000 fully air conditioned.

Q. $9,000?

A. $9,000.

Q. You say air conditioned. They are fully air conditioned?

A. Oh, yes, but I mean, we buy the units and we
1702 have the air conditioning put in, with the air conditioning fully equipped.

Q. All right. Let's get through the inventory. What else have you got?

A. Coachette.

Q. One coachette? Is that the one you have already told us about?

A. No. Twenty-one passenger. This is a Ford coachette.

Q. What did you pay for that?

A. That cost us when we purchased it in the neighborhood of $8,000.

Q. O.K. What else?

By Mr. Thompson: I can't tell from the questions, your Honor—I just don't want the confusion—I can't tell whether he is telling how many are in the picture or how many in the service. I just don't know, and the questions don't indicate.

By Mr. McConnell: I think it is perfectly clear to everybody but you, Judge, that I am asking how much of this equipment which he has got in the picture he has.

By Mr. Thompson: And you ask him how many 1703 more he has got sometimes, and sometimes you are not.

By Mr. McConnell: No, I am asking how many he is using over there in that operation. He understands.

By Mr. McConnell:

Q. You understand what I am talking about?

A. Yes. You are trying to find out the number of vehicles.

Q. Certainly. There is no problem. Now, is there anything else?

A. That just about covers it, what is shown here.

Q. How many trailers have you got?

A. At the present time?

Q. Yes.

A. Twenty-one trailers.

Q. How much do they cost?

A. Oh, they have been depreciated over the years. I couldn't tell you. The original cost of the trailers, I couldn't tell you.

Q. They are the original equipment, are they, being depreciated over the years?

A. I imagine they are.

Q. Probably depreciated down to zero now, aren't they?

1704 A. I couldn't say.

Q. You don't know what they cost in the beginning?

A. No, I don't.

By the Court: May we recess now? I want the jurors to get their trains.

Have a nice evening. Tomorrow morning at 10:00 o'clock and don't discuss it with anyone, please.

(Thereupon the following proceedings were had outside the presence and hearing of the jury:)

By the Court: I have a long call in the morning, so 10:30 for you lawyers, please.

(Thereupon an adjournment was taken to 10:30 o'clock, a.m., of the following day, May 6, 1960.)

1705 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Friday, May 6, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

1706 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1707 And thereupon the following further proceedings were had herein:

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. Case on trial.

By the Court: Bring out the jury.

(And thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Good morning, ladies and gentlemen. Proceed, please.

EDWARD BAYR, called as a witness herein on behalf of the Defendants, having been previously duly sworn, resumed the stand and testified further as follows:

By the Court: If I recall, you were on the inventory, reviewing it.

By Mr. McConnell: That is right.

Cross Examination (Resumed) by Mr. McConnell.

Q. Have we covered all the items now of equipment used by your transfer company?

1708 A. From the photos you showed?

Q. Are there any others you are operating?

A. Yes, we have other pieces of equipment.

Q. You gave us five of the 1959 Chevrolets. You gave eighteen of the Ford 12-passenger conversions, one 25-passenger Chevrolet coachette and one 21-passenger Ford coachette and 21 trailers.

What else have you got?

A. Ten tractors, two straight trucks.

Q. How much are the tractors apiece?

A. I couldn't tell. I wasn't in on the purchase of the tractors.

Q. What else?

A. Two straight trucks. You have that.

Q. How much are the straight trucks?

A. I wasn't in on the purchase of that.

Q. All right. What else?

By the Court: Speak a little louder. You speak rather fast and I would like everybody to hear you. Just speak a little louder and slower.

By Mr. McConnell:

Q. What else?

A. Two Chevrolets carry-alls.

Q. How much do they cost?

1709 A. Approximately $5,600 apiece.

Q. What else?

A. One Plymouth 12-passenger conversion.

Q. How much did that cost?

A. Approximately six thousand dollars.

Q. What else?

A. We have three, six-passenger station wagons used by our supervisors and station personnel.

Q. Those are not used by the public?
A. Not used by the public, no.
Q. How much do they cost?
A. Thirty-one or thirty-two hundred dollars apiece.
Q. Anything else?
A. Did I mention a Reo, a 29-passenger?
Q. A Reo?
A. Yes, a Reo 29-passenger.
Q. One of those?
A. That is right.
Q. How much do they cost?
A. Seventeen thousand dollars.
Q. Is that R-e-o?
A. R-e-o.
Q. All right; anything else?
A. Do we show the twenty-one trailers?
Q. Yes, twenty-one trailers.
1710 A. One Jeep, Willis Jeep, a service truck, three thousand dollars. That is the equipment we have at the present time.
1711 Q. How many employees do you have altogether?
A. 95.
Q. What are they? Just give the categories, if you will. Drivers, first. How many drivers?
A. I think at the present time we have 40 passenger drivers; 12 tractor men; 17 passenger agents; nine stewardesses; three supervisors; four garage men; office personnel—
Q. How many?
A. Nine.
Q. Is that all?
Q. Garage manager; baggage superintendent; four radio—wait a minute—five radio dispatchers.
That is all I can think of at the present time.
Q. Now turning to this air conditioning equipment,

was the air conditioning equipment which you put on when you started this service in 1955, was that built in at the factory or was that something that you people installed?

A. That was built in at the factory.

Q. How much did those units cost?

A. In the neighborhood of $360.

Q. Apiece?

A. Apiece.

1712 Q. How many of them did you have?

A. Approximately 50.

Q. So that equipment cost you approximately $18,000?

A. Whatever it figures up to.

Q. Now did you change, when you turned in equipment and replaced it, did you take the air conditioning unit off of the old equipment and put it on the new?

A. No, we haven't.

By Mr. Meserow: Please speak up, Mr. Bayr, so the jury can hear you.

By Mr. McConnell:

Q. In order to operate this air conditioning equipment, do you have to keep your windows closed?

A. Yes, you do.

Q. Did you have any trouble with the equipment in 1955?

A. No, I can't say we did, not in 1955.

Q. How about 1956?

A. 1956, no.

Q. Any other year you had trouble with it?

A. 1958, we had an overheating problem.

Q. What was that problem?

A. That was from core sand in the radiators and the blocks of the motors.

1713 Q. Any other trouble?

A. That is all. May I say that that was remedied by the Ford Motor Company?

Q. You can say it if you want.

A. All right.

Q. How long did this trouble last before Ford remedied it?

A. I would say about 30 days.

Q. What did you have to do to remedy it, send the motor blocks into the Ford Motor Company?

A. Well, the Singer Motor Company took the blocks and radiators down, had them recorded, and the sand taken out, and that remedied the situation.

1714 Q. You can't recall any trouble that you had in 1955 and 1956?

A. No, I cannot.

Q. Now you told us that you used to work for the Parmelee Company?

A. Yes, I did.

Q. At one time. When were you hired by Mr. Keeshin's company?

A. Two weeks prior to October 1st, 1955.

Q. October 1st, 1955, was the time when Parmelee was giving up the contract?

A. Correct.

Q. Do you own a garage, your company?

A. No, sir, we lease a garage.

Q. Who do you lease it from?

A. I don't recall their name at the time.

Q. When you were working for Parmelee, did they have their own garage?

A. Yes, they did.

By the Court: Pardon me, please.

(And thereupon the Court gave attention to other matters, after which the following further proceedings were had herein:)

1715 By the Court: I am sorry, Mr. McConnell.

By Mr. McConnell:

Q. Do you know how much this radio-dispatching equipment cost?

A. The units in the cars themselves, I believe $650 would be the cost, plus the units for the base stations. We have two base stations, and the charge for our tower on top of the Pittsfield Building.

1716 Q. How many of them did you have of the $650 units?

A. We started the operation in 1955, and we got 60. We bought—not bought, pardon me, but at the start of the operation we had 80 units that covered the fleet.

Q. Is that the top figure for all time since, 80 units?

A. We still have 80 units, yes, sir.

Q. Where do you sort your baggage? What space do you use for that?

A. Depot baggage are you referring to, or city delivery baggage?

Q. Either, or both.

A. Our city delivery baggage is sorted at a platform at the south end of the La Salle Street Station on Harrison Street.

The depot baggage is sorted at the various depots.

Q. This space at the La Salle Street Station, do you pay rent for that?

A. Yes, we do.

Q. Do you know what you pay?

A. I don't know the approximate cost of that.

Q. Parmelee had its own baggage sorting station,

1717 did it not, or space?

A. With reference to the city delivery, they had their own platform, yes.

Q. Where was that?

A. 300 North DesPlaines.

Q. Do you know how many vehicles Parmelee was using at the time it discontinued the service?

A. No, I couldn't say.

By Mr. McConnell: Mark this for identification as Plaintiff's Exhibit No. 119.

(Thereupon said document was marked Plaintiff's Exhibit No. 119 for identification.)

By Mr. McConnell:

Q. I show you a document which has been marked for identification as Plaintiff's Exhibit No. 119 and call your attention to this item here, and ask you if that refreshes your recollection as to what the rent is on that sorting station?

By Mr. Thompson: We object to that as immaterial.

By the Court: Rental on what?

By Mr. McConnell: The baggage sorting.

By Mr. Meserow: Your Honor, I object to that 1718 as not being material to the issue. Whatever the rent that is being paid, or the amount of it doesn't make any difference.

By Mr. McConnell: The question is a comparison of service.

By Mr. Meserow: He said he didn't know.

By Mr. McConnell: And now I am asking to refresh his recollection.

By the Court: He may answer.

By Mr. Meserow. May I see the exhibit you marked?

By Mr. McConnell: Certainly, you can look at it.

By the Witness:

A. No.

By Mr. McConnell:

Q. It doesn't refresh your recollection?

A. No.

By Mr. McConnell: I have no further questions of the witness.

By Mr. Meserow: Your Honor, I have a few questions on direct that I wanted to ask.

Redirect Examination by Mr. Meserow.

Q. Mr. Bayr, I believe in your cross examination you mentioned that you have one coachette, is that correct, in operation now?

A. No.

Q. How many do you have?

A. Six Ford coachettes and one Chevrolet coachette.

Q. Let's clarify this entire list of equipment for the record.

Can you tell us how much equipment you have at the present time in operation of the Railroad Transfer Service? If you don't know, if you want to refresh your recollection, do you have some document with you or list that you might have made up?

1720 A. Yes; we have seventy-five pieces in toto of equipment, forty-one in the passenger use and thirty-four in the baggage department for handling baggage.

By Mr. McConnell: I object to his testifying from anything unless he has exhausted his recollection.

By the Court: Yes, sustained. Counsel prefaced it by saying, "If you have no memory, if you can't recollect, you may refer to a document."

First, exhaust his recollection.

By Mr. Meserow:

Q. Do you know?

A. Yes.

Q. Then proceed and answer the question.

By the Court: In other words, Mr. Witness, tell them all you know without referring to a document, and if you have exhausted your memory, you may refresh your recollection.

By the Witness:

A. Nineteen Ford 12-passenger station wagons, six

Chevrolet 15-passenger station wagons, three six-
1721 passenger supervisor's cars, one four-door sedan, the safety supervisor's car, two Chevrolet carry-alls, and GMC carry-all, one Plymouth conversion 12-passenger, six coachettes Ford, one coachette Chevrolet, one Reo 29-passenger.

I believe that covers the passenger.

Q. What about the tractors and trailers?

A. Tractors and trailers, we have 21 trailers, 10 tractors, two straight trucks, and we have one Jeep that we use in the garage.

Q. Is that all of your equipment in use at the present time?

A. That is right.

By Mr. McConnell: The same as what it was before, Counsel.

By the Witness: That is right.

By Mr. Meserow:

Q. Do you know the average number of passengers that you transported in 1955 between stations?

A. Per day?

Q. Per day.

A. Over the early period I would say in the neighborhood of four thousand.

Q. What is the average per day at the present time?

1722 A. Between twenty-five and twenty-six hundred, I believe.

Q. In your answer to Mr. McConnell's question about the number of employees, did you include the baggage agents?

A. No, I forgot the baggage agents.

Q. How many baggage agents do you have?

A. Six.

Q. Mr. Bayr, do you have sufficient equipment at the present time and have you had since October 1, 1955, to transport all of the passengers from station to station that were required to be transferred?

A. Yes.

By Mr. McConnell: I object to that as calling for a conclusion.

By the Court: Overruled.

By Mr. Meserow:

Q. What was your answer?

A. Yes, we have sufficient equipment.

Q. During the time you worked for Parmelee in the various capacities and towards the end as a supervisor, did you have occasion to visit at stations when the trains came in, and did you observe the people waiting for the Parmelee vehicles?

1723 A. Yes, I did.

Q. Were there times that the passengers had an extended wait for the Parmelee vehicles to arrive?

By Mr. McConnell: I object to that as leading and suggestive.

By the Court: Yes, sustained.

By Mr. Meserow:

Q. What was the service—will you describe the service for the people that waited for the Parmelee vehicles?

By Mr. McConnell: I want the time and place fixed.

By Mr. Meserow:

Q. (Continuing) At the various stations in your observation in 1955 prior to October 1?

1724 A. Will you repeat that, please?

Q. In your work as supervisor for Parmelee, did you go to the stations?

A. Yes, I did.

Q. Did you see the people getting off the trains and going onto a Parmelee vehicle?

A. Yes.

Q. Did you also observe the fact of whether or not people waited for the Parmelee vehicles?

A. Yes.

Q. How long as a rule did some of them wait?

A. 15 minutes, 30 minutes, or 40 minutes.

Q. How long?

A. 40 minutes.

Q. Some waited as long as 40 minutes?

A. Yes.

Q. Any more than 40, that you know of?

A. Not that I can recollect.

Q. Have you also in your position of general manager of Railroad Transfer Service had occasion to visit the same stations?

A. Yes.

Q. Have you observed the people emerging from the trains?

1725 A. Yes.

Q. Have you observed any people, any passengers, waiting for the Railroad Transfer vehicles?

A. We have had short waits, not of long duration.

Q. How long?

A. Maybe—I would say at the most ten minutes.

Q. That is the most?

A. That is the most.

Q. How do you account for the fact that the Parmelee vehicles, that some of the people had to wait 40 minutes maximum with that, and the Railroad Transfer a maximum of maybe ten minutes?

By Mr. McConnell: I object to that. That calls for a conclusion and argument.

By the Court: Overruled; he may answer.

By the Witness:

A. Radio dispatched vehicles is the answer.

1726 By Mr. Meserow:

Q. In other words, the radio-dispatch, two-way radio, made for faster pickup of the people, correct?

A. That is right.

By Mr. McConnell: I object to the question as leading and suggestive.

By the Court: Yes, Counsel's remarks, interpretation of it may be stricken.

By Mr. Meserow:

Q. How much liability and property damage does Railroad Transfer carry, the insurance?

A. One million dollars.

Q. One million?

A. General liability, yes.

Q. And that is applicable to the public?

A. That is right.

Q. If a person, a friend or a relative comes to meet an incoming passenger at the railroad station and wants to ride in the Railroad Transfer vehicle to the outgoing station to be with their relative or friend, does Railroad Transfer Company make any charge for this guest or friend or relative to travel to the outgoing station?

A. They make no charge for that service. They

1727 give them a courtesy ride.

Q. Did Parmelee make any charge for this type of transfer?

A. Yes, they did.

Q. How much was it?

A. In 1955, it was seventy-five cents.

By Mr. Meserow: No further questions, your Honor.

Recross Examination by Mr. McConnell.

Q. When was it that you saw someone wait forty minutes with Parmelee?

A. On many occasions.

Q. Well, when?

A. I can't exactly give you the exact date.

Q. Can you give us the time?

A. Time? Yes, around between two and three o'clock in the afternoon.

Q. Five years ago?

A. Five years ago.

Q. What station?

A. Union Station.

Q. Any other occasions?

1728 A. Dearborn Station.

Q. When?

A. In the mornings, between seven and eight.

Q. What date?

A. Back in 1955, 1954.

Q. What time of the year? Can you fix a day?

A. I can't say a certain date, no.

Q. Can you say a certain month?

A. During the summer months.

Q. Can you fix it any closer than that?

A. July and August.

Q. Both months?

A. Either month.

Q. What was your job then with Parmelee?

A. Superintendent.

Q. Were you superintending that service?

A. That is right.

Q. This was under your jurisdiction?

A. That is right.

Q. Now, what was the method of calling a vehicle used by Parmelee?

A. Telephone service.

Q. Where did the telephone call go when they wanted a vehicle?

1729 A. It went to 300 North Des Plaines where they had a central dispatch.

Q. How long did it take to get from 300 North Des Plaines to, say, the Union Station?

A. You mean the phone call itself or a vehicle?

Q. Vehicle.

A. Seven minutes.

Q. And you had your own garage with your own vehicles in the garage, did you not?

A. That is right.

Q. Now you say you have had waits with your equipment?

A. Yes, we have.

Q. With Keeshin?

A. Short waits.

Q. What occasioned those waits?

A. What occasioned them?

Q. What occasioned them, yes.

A. Heavy rainfall, heavy traffic in the Loop.

Q. Something that had to do with the vehicle getting there?

A. That is right.

Q. Now, on these waits that you are telling us about in July and August of 1955?

1730 A. Yes.

Q. That was the month or that was the time in which the service was being discontinued by Parmelee and being taken over by Keeshin's company?

A. Keeshin took over on October 1, 1955.

Q. I know, but everybody knew he was taking over in July and August, didn't they, including yourself?

A. I believe so, yes.

Q. Everybody working for Parmelee knew at that time that their service was going to be superseded by Mr. Keeshin's service, isn't that right?

A. This is July and August?

Q. July and August, 1955.

A. There was nothing definite at that time.

1731 Q. Well, you knew it.

A. I didn't know it.

Q. You didn't know it?

A. No, sir, I did not know it at that time. We had seen surveys being made in the various stations. We had seen people around checking on passengers and baggage, et cetera, but that had been done before.

Q. Was there anything different in July and August in the service of Parmelee than there was prior to that time? Was the service better or worse, or what?

A. With Parmelee?

Q. Yes, Parmelee.

A. It was about par for the course.

Q. And that was the company you worked with for how many years?

A. 27 years.

Q. 27 years?

A. That is right.

Q. And you were the supervisor and superintendent?

A. That is right. We had a labor problem.

Q. You had an A.F. of L. union, didn't you?

A. We did.

Q. And you were being superseded by an independent union, is that right?

1732 A. That is right.

Q. Weren't you one of the people who were trying to solicit membership in the independent union from our A.F. of L. union people during that summer?

A. No, I was not.

Q. Were you trying to solicit any of our employees for Mr. Keeshin?

A. I never did.

Q. How many employees of the Parmelee company went with Mr. Keeshin?

A. Approximately, I would say, 50.

Q. Did you talk to any of them about it?

A. Prior to when?

Q. Prior to their going.

A. No, sir, I did not.

Q. Was there some transfer of some kind of union membership at that time of the Parmelee employees?

A. That I couldn't say.

Q. You don't know anything about it?

A. I don't know.

Q. Were you a member of the union?

A. Am I?

Q. No, were you

A. No, I was a superintendent. I couldn't be a 1733 member of the union.

Q. I am just asking you the question.

A. All right. I was not a member of the union.

Q. And these 50 employees who went from Parmelee, including yourself, were the same employees that Mr. Keeshin was going to use?

A. That is right.

Q. How many employees did Parmelee have at that time?

A. I couldn't give the exact number.

Q. What were these employees? Were they drivers, or what?

A. Drivers, stations agents.

Q. All right. How many drivers went with Keeshin?

By Mr. Owens: I will object to this, your Honor. It

has no materiality or relevance, and it is going beyond the scope of the direct examination.

By Mr. McConnell: No, it is not. It has to do with the take-over, what happened.

By the Court: Objection sustained.

By Mr. McConnell: Well, I will have to make an offer of proof, I suppose, outside the presence of the jury. I can't do that now.

By Mr. Owens: I will object to counsel's remark.

1734 By the Court: Pardon me?

By Mr. Owens: I object to counsel's remark as he walked away from the Court.

By the Court: I have no objection to his making an offer of proof. That is all right.

By Mr. McConnell: What is wrong with it? I don't know.

By the Court: I have no objection to it. That is all right.

By Mr. McConnell: I have no further questions of the witness.

By the Court: Anyone else?

You are excused.

(Witness excused.)

By Mr. Thompson: We desire to read briefly from some of the exhibits that are in evidence on behalf of the defendants.

From Defendants' Exhibit 15, we read only the resolution that was adopted by the representatives of the Terminal Lines on January 29, 1954:

"Resolved that a committee consisting of the AT&SF, B&O, C&NW, Illinois Central, New York

1735 Central, Pennsylvania, and the chairman be appointed to make a study of the transfer situation, including various types of operation that can be

devised to definitely meet the needs of the public without increasing the cost to the railroads; report and recommendations to be made to Chicago Terminal Lines for consideration at a later meeting."

1736 Then from Defendants' Exhibit 1, which is a memorandum of April 27, 1954, from Mr. Sloan in Mr. Anderson's name to Mr. Duffy of the Santa Fe:

"Supplementing our memorandum of April 23 regarding Parmelee transfer charges, in advance of the meeting of Chicago Terminal Lines with Mr. Markin of the Parmelee Company, April 26, we advised Chairman Padrick, who was handling the negotiations, that we were not agreeable to retroactive payments, nor to the proposed escalator clause in connection with possible wage increase.

"During the discussion, Mr. Markin advised Chicago Terminal Lines that they had studied all of the savings and changes in service discussed at previous meetings, and had reviewed operations for the first quarter of 1954, and it was their opinion that to break even they would need between $1.32 and $1.35 coupon rate.

"During this discussion, Mr. Markin indicated
1737 they were agreeable to a maximum three-cent escalator clause, the Parmelee Company to absorb any wage increase over nine cents. They hoped to settle for five or six cents, which would mean one and two-thirds cents or two cents increase in coupon rate. Proposal was submitted for coupon rate of $1.20 effective April 1st, with one-cent increase effective July 1st for each three cents of wage increase up to a maximum of three cents.

"We voted against this proposal together with the C&EI and the CB&Q, and endeavored to secure support of other lines in standing firm on $1.20 effective

April 1st, without the escalator clause, but none of the lines present would join us, including the C&EI and the CB&Q.

"Finally, the C&EI and CB&Q voted with the majority, and we were forced to do likewise. At this point the New York Central secured support of majority present to proposal that lines give fur-
1738 ther consideration immediately to meeting demand for retroactive payment if April 1st was not accepted by Mr. Markin.

"Mr. Markin returned to the meeting room and proposal was submitted to him, but he declined to accept it, and indicated he would have to give up the transfer service if the Chicago Terminal lines would not make it retroactive. He was asked to withdraw again to give the terminal lines opportunity to discuss the matter further.

"Proposal was then submitted by the New York Central to authorize retroactive payment of $1.20 to January 1st. Santa Fe and C&EI were the only lines voting in opposition, and as we did not wish to discontinue transfer service in connection with our line, found it necessary to join with the majority. The C&EI also found it inexpedient to stand out against the majority.

"It was decided, however, that before offering to
1739 settle for the full $1.20 retroactive to January 1st, we would offer Parmelee half of the increase or $1.12½, January 1 to March 31, and this proposal was finally accepted by Mr. Markin.

1740 "Final agreement is as follows: $1.12½, January 1—March 31, 1954; $1.20, April 1—June 30, 1955, with three cent maximum escalator clause, July 1—June 30, 1955."

The last paragraph of that is unimportant.

We also read Defendants' Exhibit 18, which is a letter dated September 23, 1954 to Mr. Padrick from Mr. Markin of the Parmelee Transportation Company:

"We wish to advise that we have entered into new wage agreements with the union representing those employees, including drivers, who are engaged in the baggage and passenger interstation transfer operations.

"These agreements are effective July 1, 1954, and terminate June 30, 1955, and necessitate an increase of 5½ cents per hour in the wage rate plus the continuance of an escalator clause which will increase wages proportionately with the increase in the cost of living.

"In accordance with our agreement on April 26,
1741 1954 with the Chicago Terminal Lines wherein the regular coupon rate would be increased a maximum additional amount of three cents with the signing of new labor agreements, basis one cent for each three cent wage increase, we will increase the regular coupon rate from $1.20 to $1.22, effective July 1, 1954."

1742 I read excerpts from the bid of J. L. Keeshin, which is dated December 15, 1954, which is Defendants' Exhibit No. 19:

"We have carefully gone into the requirements in the transferring of passengers and baggage between the various stations as outlined and have arrived at the conclusion that we can effect a faster transfer service of baggage. We also hope to improve on the handling of passengers by having available the latest and most modern vehicles with all the latest safety features and design to afford the passengers safer and more comfortable riding. It is our proposal to

arrange to supply a sufficient number of 20-foot trailers equipped to operate satisfactorily to and from the stations as outlined. This operation commonly known as the shuttle system will result in several transfers of baggage daily between stations. We believe that with this type of service the results will
1743 bring about a considerable improvement in comparison to present-day operations. Because of our contemplated shuttle service we are inclined to believe after a careful analysis that the baggage can generally accompany the passenger on the train on which the passenger is scheduled to depart. With regard to transporting passengers between stations, we will purchase a large fleet of modern deluxe eight-passenger station wagons equipped with hydromatic drive plus a modern type of air conditioning units with temperature control. Each individual station wagon will be equipped with an RCA mobile radio unit. It is our intention to set up at the LaSalle Street Station a central dispatch system with the necessary radio equipment and manpower to facilitate our control to best utilize the drivers and automotive power. Later this radio control might be extended to our tractor equipment also if that should become neces-
1744 sary. Passenger equipment will have a large type heater to afford the passengers the same kind of winter comfort as the air conditioning units will provide for the summertime travelers. We feel that these kinds of innovations will prove to be an added attraction for the travelers passing through the Chicago gateway. We also believe that the winter and summer comforts and convenience provided by the modern deluxe railroad cars of today should be duplicated as much as possible in the automotive vehicle that is the connecting line between trains. Our study of the

movements of passengers convinces us that a radio control and dispatch will do much to eliminate passenger irritation caused by unnecessary delays, because we are assured it will be able to dispatch the equipment to whatever station may have a peak load of passengers on short notice at any intervals during the working day.

1745 "We think it might also prove of real value in the instance of late arrival trains or under other abnormal and emergency conditions. A further advantage of radio control in our opinion might be that the vehicle and driver will be instantly dispatched to transfer passengers with only a limited time to make the necessary train connections."

We will skip the next two pages, Mr. McConnell.

Page 5:

"Based upon the facts outlined in this letter and other data which we have studied, we are prepared to submit a price of $1.20 per coupon for the transfer of passengers and baggage between stations. This charge per coupon is based on our cost analysis on the factors involved plus our labor contract which will become effective July 1, 1955 through June 30, 1956. If at the end of the first year's union contract there should be a wage increase, we would like to arrange to be protected by an escalator clause to be

1746 as follows: For each five cents' increase in the direct wage costs we would expect to receive a one cent increase per coupon. Because of our complete confidence in the future of the railroad industry and because of their constant desire to improve their equipment and service, we will not hesitate to invest whatever amount of capital may be required so that we may also be a partner in the future growth and progress of that

industry. Our estimate of the amount of capital required to furnish all the facilities and equipment necessary will exceed $500,000. Because of the large amount of capital invested in this operation, to be t provide the type of service and equipment, we feel will best service the needs of all concerned, we are prepared to enter into a contract agreement for a period of five years. We feel that a contract for five years' duration offers both you and us the best opportunity to provide a permanent and satisfactory service and to build a fine and mutually advantageous business relation-
1747 ship."

The last paragraph of the letter is as follows:

"Mr. James U. Snydacker, vice-presidence of the First National Bank of Chicago, can be contacted on any question regarding credit and the financial responsibility of the writer. He will be happy to supply any financial data you may require."

Signed by Mr. Keeshin.

Then on January 15, 1955, Defendants' Exhibit No. 20, the supplemental letter of Mr. Keeshin, which is as follows:

"This will have reference to your letter of January 11, 1955 in connection with the Chicago Association of Commerce and Industry bulletin covering the truck drivers' recent three-year labor wage contract. The contracts in question were concluded for a three-year period setting up for the first year ten cents an hour wage increase, a five-cent an hour pension fund and an additional $2.75 a week welfare fund, including hospitalization and medical care.

1748 "Since the labor contract is now settled covering the three-year period, I am willing to correct our original proposal on the escalator clause so that the

rate per coupon for the second year will be $1.22 per coupon and the third year will be $1.23 per coupon. The only revision will be the one-cent increase covering the third year.

"To summarize, we will protect a $1.20 per coupon rate for the first year, $1.22 coupon rate for the second year, and $1.23 for the third year. There may be a question raised by your committee concerning peaceful labor relations in the event we are awarded the contract. Let me assure you and your committee that the subject has been gone into most thoroughly, both with Mr. Edward Fenner, the head of the drivers' Local Union No. 705, and also with Mr. James Hoffa, the International Executive Vice President of the Drivers' Union, and they have assured me of every cooperation to maintain complete harmony in order
1749 to have a satisfactory service available at all times. They would be glad to meet with your committee to give them their personal assurances."

On March 15, 1955, which is Defendants' Exhibit No. 21, the proposal of the Parmelee Transportation Company by Morris Markin, Chairman of the Board, and the proposal commences on Page 3 as follows:

"We are prepared to make this investment and furnish the kind of service that the railroads and their passengers are accustomed to, and in that connection we propose for your consideration the following:

"1. That the railroads, by written agreement, will continue with our services until December, 1961.

"2. That commencing with July 1, 1956 an adjustment of the coupon of one cent for each increase or decrease of three cents per hour in wages of the driver employees and that such adjustments shall continue yearly thereafter until the expiration of this contract.

1750 "3. That commencing with July 1, 1956, and yearly thereafter on July 1 the price of the coupon will be increased one cent for each one percent decrease in the number of coupons received by Parmelee during the base period and the price on the coupon will be decreased one cent for each one percent increase in the number of coupons received by Parmelee during the base period."

The next paragraph just supplements that. No. 5:

"5. That the baggage at all depots which is to be transferred by Parmelee shall be sorted and manifested by the railroads in triplicate. That Parmelee will assume any increase in cost of labor between July 1, 1955, and June 30, 1956. That Parmelee will assume any loss of revenue through the reduction in the number of coupons received between July 1, 1955, and June 30, 1956.

1751 "8. That the present coupon rate will be reduced from $1.22 to $1.20 as of July 1, 1955."

Defendants' Exhibit No. 22, which is the supplemental letter of Mr. Keeshin to the committee of April 6, 1955 is as follows:

"After an exhaustive study and consideration of the facts before me, I believe further enlightenment covering use of 20-foot trailers for the purpose of transporting passenger baggage is called for. Agents will be assigned to take care of passenger requirements and will be available at all stations sixteen hours a day. Observation reveals the handling of baggage by your employees could be reduced. The present method of handling the baggage onto your baggage hand trucks, unloading and stowing on the floor and baggage rooms and reloading crates congestion and contributes to the loss and damage

potential. Our plan tends to diminish the handling and labor involved. Your employees would merely drop the baggage directly on the trailer rather than go
1752 through the several handling chores observed during our survey and would neither stack nor load the baggage on the trailers."

Then skipping to paragraph II.

"In our original proposal we should have stated in the event the railroad management interposed objections to or doubted the feasibility of the trailer plan outlined above, we would eliminate it and substitute an operation similar to what you have now, except in place of a straight truck which has either a 12-foot or a 14-foot body, I would strongly urge the use of a 20-foot trailer for the transfer of baggage and our drivers would be responsible for the loading and unloading as is presently being performed.

"We assure you that our many years of experience dictates to us that this would be the best interests of all concerned. Our union labor regulations do not restrict the drivers performing this service."

Then paragraph "J" is as follows:

"To reiterate any decrease which might confront
1753 you in passenger traffic will in no way effect our proposed rate or the efficiency of the service. That is a fixed guarantee for three years, and we submit any economical change in this operation would be one for management to cope with and adjust accordingly to the dictates of its experience and ability. We submit that the present modern improvements by the railroads should be carried further to afford a deluxe service to the passengers using the bridge service between Chicago stations.

"The equipment to be used by us will be radiophone controlled, air conditioned during the summer

months and chauffeured by specialists in their field. It is felt that the accompanying publicity telling the public of the improved comfort at their disposal when transferring at the Chicago gateway will in some measure prove helpful in eliminating further decrease of passenger traffic in this region and prove consistent with the railroads' endeavors to improve
1754 their service wherever possible in the public interest."

Defendants' Exhibit No. 29 is the memorandum of April 21, 1955 to the file by Mr. Whittington which reads:

"Discussed with assistant vice-president Baird of the New York Central the Parmelee transfer contract and arrangements. I told Mr. Baird that I thought it was time for the railroad passenger traffic executives to consider this matter rather than have it delayed at frequent meetings with the Chicago committee. Mr. Baird agreed. I told him that we had continued to carry on with Parmelee with continued increase in transfer charges primarily for the reason that we had not received any other competitive bids from other companies; that the picture had now changed and that Keeshin company and the Willett Motor Coach Company were both interested in performing the service. Mr. Baird knew nothing of the Parmelee recent indicated charge of $1.50, and I told him that while
1755 this was not made in writing, that their representative had indicated to the Chicago committee that with requirements for new equipment and increased labor costs it was possible that their charge would have to be $1.50 per person. That it was not until Keeshin and Willett had entered into the picture that Parmelee had agreed to continue the service on the present rates.

"Mr. Baird agreed that the New York Central, the Santa Fe and our line were the principals involved in the Parmelee service because of the Pensylvania Railroad Union Station facilities, and that we would discuss it informally with other interested lines in Chicago the latter part of next week."

Then Defendants' Exhibit No. 25, which is dated June 20, 1955, and reports the proceedings of the Terminal Lines on June 13, 1955.

"The committee appointed at Chicago Terminal Lines' meeting January 29, 1954 presented a report and recommendation concerning the transfer of pas-
1756 sengers and baggage between stations in Chicago. After discussion the following recommendation was offered:

"It is recommended that effective with the close of business September 30, 1955 the arrangements with the Parmelee Transportation Company for the transfer of passengers and baggage between stations be terminated.

"It is further recommended that effective October 1, 1955 arrangements be made with Mr. J. L. Keeshin for the transfer of passengers and baggage between stations in Chicago.

"Adopted.

"The chairman was directed to inform Parmelee Transportation Company and Mr. J. L. Keeshin of the action taken and to arrange with Mr. J. L. Keeshin for a draft of proper contract to cover the operation for five years terminating September 30, 1960."

With the hope we could get this to the jury today, the defendants have decided to put on no more witnesses, and the defendants now rest.

1757 Whereupon The Defendants Rested Their Case In Chief

By the Court: That means for all defendants?

By Mr. Thompson: Yes, your Honor.

By Mr. McConnell: May we have a five-minute recess, Judge?

By the Court: Yes, a ten-minute recess.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, out of the presence and hearing of the jury:)

1758 By the Court: All right. Mr. McConnell, before the jury comes out, I am mindful of your request about 4:00 o'clock today, and I don't want to embarrass you before the jury. I want to oblige you if I can.

By Mr. McConnell: We can't finish this afternoon, and if I have to take the onus before the jury, I will have to, I guess. You can tell them that I am the bad boy in this outfit.

By the Court: No, I am going to explain to the jury. I will not shift the responsibility to you, and that is why I am talking to you in the absence of the jury so I can say something to that effect.

By Mr. McConnell: I appreciate it.

By the Court: How long will it take you, approximately, do you think?

By Mr. McConnell: I will be through by noon Monday.

By the Court: Then over the week end, I would appreciate very much if each of you would prepare instructions and forms of verdict so that you can bring them in Monday morning and we can discuss them.

Then may I say to the jury, when I explain that I am not prepared with my instructions, and so on, that I
1759 hope to be through by Monday or Tuesday and not later? May I say that?

By Mr. McConnell: As far as I am concerned.

By Mr. Thompson: As far as we are concerned, but I think the less we say to the jury, the better.

By Mr. McConnell: You have already said it. Judge Thompson already has told the jury it is in my lap.

By the Court: No, I don't want the jury to get the impression that it is your delay.

Now, have I said everything on that, the instructions, and so on?

By Mr. McConnell: You have said everything you can say, and I appreciate it very much.

By the Court: That is all right. I will recess here about a quarter to four, and that will give you a chance to get over to Judge Adesko.

By Mr. McConnell: Thank you.

By the Court: All right. Bring out the jury.

(Whereupon in the presence and hearing of the jury the following proceedings were had:)

By the Court: It has been really twenty minutes instead of ten.

I have been discussing with both counsel the pos-
1760 sibility and advisability of letting you folks go for good as early as possible, and both counsel are extremely anxious to do so.

On the other hand, I do not see how we can possibly close it today with a rush. I haven't my instructions ready. Counsel will put in a little rebuttal. It will take me a little time to prepare my instructions, and then there will be considerable argument before the jury. Rather than have you tied up late at night, and I don't know how long it will take you, would I be imposing on you—and it is on me and nobody else in the case—if you have to come in on Monday?

I guarantee you, and I have the blessings of both sides, that we will try to dispose of it with dispatch some time Monday or not later than Tuesday. We are fortunate, because it is ordinarily a very lengthy trial otherwise, and everybody is concerned with your convenience.

I have told you the exact situation as prevails now so if you will be good enough, I will appreciate it very much, to just bear with us for not more than one or two days.

You know, they say haste makes waste. I am trying to avoid it so I can cover the law on it. There have
1761 been some serious questions of law here that you have seen me wrestle with, and that I have been trying to resolve, and I want to get my own bearings on it. So you can rest assured definitely that you will be through Tuesday, and maybe Monday.

In the meantime, you will have a nice week end rather than work until very late tonight, because it would be a long time with four counsel on one side and two on the other. I don't want to limit their time on arguments either.

All right, now we will proceed—oh, let's go out and have lunch and come back at two o'clock. That is for your good behavior.

(Thereupon a recess was taken to 2:00 o'clock, p.m., of the same day, Friday, May 6, 1960.)

1762 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Friday, May 6, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

1763 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1764 (And thereupon the following further proceedings were had herein:)

By the Clerk: The case on trial.
By the Court: Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

And Thereupon The Plaintiff, In Order To Further Maintain The Issues In Its Behalf, Introduced The Following Evidence in Rebuttal:

HERBERT B. LAZARUS, called as a witness on behalf of the Plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?

A. Herbert B. Lazarus.

Q. Where do you live?

A. The town of Newcastle, Westchester County, New York.

Q. What is your profession?

1765 A. I am an attorney at law.

Q. In what state?

A. I am admitted to practice in the State of New York.

Q. How long have you been a practicing lawyer in the State of New York?

A. Thirty years.

Q. What is your present business or occupation?

A. I am president of the plaintiff, Parmelee Transportation Company.

Q. How long have you been president of that organization?

A. Two years.

Q. Prior to becoming the president of the plaintiff, what was your occupation? What was your business?

A. Vice president and general counsel of American Broadcasting Paramount Theatres. I have also been a director of Parmelee Transportation Company since 1955.

Q. In 1955 did you know who held the stock of the Parmelee Company?

A. Yes.

Q. Who held it, as far as you knew?

A. It was held by the public. The stock is listed
1766 on the New York Stock Exchange and has been since 1929. In 1955 we had outstanding approximately 590,000 shares.

Q. Do you know how many shares Mr. Markin owned of the Parmelee Company?

A. In 1955?

Q. Yes.

A. Six hundred fifty.

Q. Do you know approximately how many different holders of shares there were?

A. Several thousand.

Q. In 1955 did Parmelee, did the Parmelee Company own any Yellow Cab Company stock?

A. Yes, sir, approximately 45 percent of the outstanding stock.

1767 Q. And of what Yellow Cab Company was that?

A. The Chicago Yellow Cab Company. That stock is listed on the New York Stock Exchange, and there are thousands of stockholders and were in 1955.

Q. The balance of the shares were held how?

A. Parmelee Transportation Company owned approximately 45 per cent.

Q. Who owned the balance, do you know?

A. The public.

Q. Do you know whether or not the Parmeelee company owned any shares of the Checker Taxi Cab Company?

A. Yes, I do. They own no shares.

Q. And that is the Checker Cab Company—they didn't own any shares in Chicago of the Checker Cab Company?

A. The Checker Taxi Company, Incorporated, of Chicago, no, sir.

Q. Do they now own any of the shares of this Continental Airport Transport?

A. The Continental Air Transport Company, Inc. is a 100 per cent wholly owned subsidiary of the Parmelee Transportation Company.

Q. What is their business?

A. Their business is airline terminal service serving the airports of Chicago.

1768 Q. What connection does Mr. Markin have with the Parmelee company?

A. Mr. Markin is chairman of the board of the Parmelee Transportation Company.

Q. Is he related to you in any way?

A. Yes.

Q. What is the relation?

A. My wife's father.

By Mr. McConnell: You may cross examine.

1769 *Cross Examination by Mr. Thompson.*

Q. What is the Checker Taxi Company, Inc., of Chicago?

A. Well, the Checker Taxi Company, Inc., operates a fleet of taxicabs in Chicago, among other things.

Q. And that is owned a hundred percent by Morris Markin?

A. That is right.

Q. Checker Cab Manufacturing Company of Kalamazoo is what?

A. Is a corporation which manufactures taxicabs and automobiles.

Q. And that is owned 48 percent by the Checker Taxi Company?

A. Approximately; a little less than that.

Q. And Parmelee Transportation Company, Inc., is a subsidiary of Checker Cab Manufacturing Company of Kalamazoo, isn't it?

A. Yes, I would say so.

Q. And Checker Cab Manufacturing Company of Kalamazoo owns 63.3 percent of Parmelee Transportation Company?

A. A little less.

Q. Then who owns the other 47 percent?

1770 A. The general public.

Q. Then Chicago Yellow Cab Company is in turn owned by Parmelee Transportation Company?

A. No, sir, it is not owned. At the time, in 1955, it was 45 percent owned, the stock was 45 percent owned.

Q. In other words Morris Markin owns a hundred percent of Checker Taxi Company of Chicago, Checker Taxi owns 48 percent of the Checker Cab Manufacturing Company of Kalamazoo, Checker Cab Manufacturing Company of Kalamazoo owns 63 percent of the Parmelee Transportation Company, and then the Parmelee Transportation Company owns 45 percent of the Chicago Yellow Company?

A. Approximately.

Q. We won't bother with fractions.

Now, this Transportation Maintenance Corporation in Chicago is owned by whom?

A. Well, it is owned jointly by Checker Taxi Company, Inc., and Chicago Yellow Cab Company.

Q. About fifty-fifty?

A. 51/49.

Q. Fifty-one percent by Checker Taxi and forty-nine by Yellow?

A. Correct.

1771 Q. And Continental Air Transport of Chicago is owned a hundred percent by Parmelee?

A. Correct.

Q. In addition to owning these two taxi companies in Chicago, as you have indicated, the ownership as you have indicated, Parmelee Transportation Company also owns the National Transportation Company of New York?

By Mr. McConnell: He hasn't indicated that Parmelee owns it. He has indicated just the opposite.

By Mr. Thompson:

Q. I will ask if Parmelee Transportation Company, Inc., owns all of National Transportation Company of New York, does it?

A. It is a wholly-owned subsidiary of Parmelee, that is correct.

Q. That is right, and it operates the taxis in New York?

A. Yes, a fleet of cabs in New York City.

Q. Then the Parmelee Motor Fuel Company of Pittsburgh is wholly owned by Parmelee Transportation Company?

A. That is right.

Q. And the Parmelee System, Inc., of New York
1772 —that is inactive.

Yellow Taxi Company of Minneapolis is owned a hundred percent by Parmelee Transportation Company?

A. Correct.

1773 Q. And the Yellow Cab Company of Pittsburgh, Pennsylvania likewise?

A. Wholly owned subsidiary of Parmelee.

Q. And the Airline Transportation Company of Pittsburgh, Pennsylvania is wholly owned by Parmelee?

A. Right.

Q. Now this Chicago Yellow Taxi Company, Inc. is a holding company, isn't it?

A. Chicago Yellow Cab Company is a holding company which owns all the stock of Yellow Cab Company of Chicago.

Q. Yellow Cab Company of Chicago which operates the Chicago Yellows is wholly owned by Chicago Yellow Cab Company, Inc., which in turn is in part owned by Parmelee Transportation?

A. That is right.

Q. And the Benzoline Motor Fuel Company of Chicago is owned a hundred per cent by Chicago Yellow Cab Company, Inc.?

A. Correct.

Q. And also the Utility Motor Fuel Company of Robey, Indiana?

A. That is right.

Q. And this bunch of motor vehicle companies
1774 in Chicago buy their fuel from these gasoline companies, don't they?

A. Not necessarily.

Q. Well, I appreciate not necessarily, but do they?

A. Well, at the moment they don't.

Q. They but it cheaper somewhere else?

A. Yes.

Q. What about the insurance on the group of companies? Is that carried by the General Fire and Casualty Company?

A. Some of it.

Q. And that in turn is owned in part by Checker Taxi Company, Inc. of Chicago and the Parmelee Transportation Company, Inc. and the Chicago Yellow Cab Company, Inc.?

A. That is right.

Q. You are an officer of that, too, aren't you?

A. Of which, sir?

Q. The insurance company.

A. I am a director of General Fire and Casualty Company.

Q. Are you also a director of all of the rest of these companies we have named?

A. No, sir.

1775 Q. Are you a director of Chicago Yellow Cab that operates the cabs here?

A. Yes, I am.

Q. And of the Checker Cab?

A. No, sir.

Q. You have no official position in the company that operates the Checker cabs in Chicago?

A. None whatsoever; official or otherwise.

By Mr. Thompson: I will ask that this be marked Defendants' Exhibit 42 for identification.

(Thereupon said document was marked Defendants' Exhibit No. 42 for identification.)

By Mr. Thompson:

Q. I show you Defendants' Exhibit 42 for identification, which purports to be a corporate chart of these companies I have mentioned.

Is that an accurate statement of the interlocking ownerships?

A. I don't know as of what date this is, but it is substantially accurate, as of a given date.

Q. Substantially true as of 1955?

A. Substantially.

1776 Q. Now the interstation transfer service here in Chicago was operated directly by Parmelee Transportation Company, Inc., wasn't it?

A. That is correct.

Q. No subsidiary?

A. No.

Q. Do you happen to know what percentage the annual business of this local transit company, interstation transfer company, represented of the total of the Parmelee Transportation Company, Inc. in 1955?

A. Inasmuch as I became a director during the year 1955, and we lost our business completely during the course of that year, I couldn't give you a year's figures on it.

Q. Well, all right, let's take 1954 then.

A. I cannot answer that of my own personal knowledge.

Q. Let's take October 1, 1954 to October 1, 1955.

A. I was not connected with the company then.

Q. When did you become connected with it?

A. In 1955.

Q. When?

A. In April.

Q. All right, from April to October.

A. I was a director at the time and had no per-
1777 sonal knowledge.

Q. So you don't know what percentage of the business of Parmelee Transportation Company, Inc. this local interstation transfer business represented?

A. No.

Q. Sir?

A. As of that time, I do not know.

Q. Well, do you know as of any time?

A. Well, that is the only time you asked me. Prior to that, naturally I didn't know.

1778 Q. Subsequent to October 1, 1955, you didn't represent any part of—and prior to that you don't know?

A. Not sufficiently well to give you an accurate answer.

By Mr. Thompson: Very well. We offer in evidence this exhibit, if your Honor please.

By the Court: Any objection.

By Mr. McConnell: No objection.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit No. 42.)

By Mr. Thompson: That is all.

(Witness excused.)

By the Court: Call your next witness.

By Mr. McConnell: I would like to call Mr. Meserow to the stand.

By Mr. Meserow: This is a new role for me, your Honor, in this case.

ALBERT J. MESEROW, called as a witness by the
1779 Plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your name, please.

A. Albert J. Meserow, 231 South LaSalle Street, and I am a lawyer and have practiced for thirty years in the State of Illinois.

Q. During the months of May and June of 1955 did you represent Mr. Keeshin as a lawyer?

A. I did not.

Q. When did you first become retained by him?

A. In the latter part of September of 1955.

Q. Did you represent Local Union No. 725?

A. I did not.

Q. Did you, on May 31, 1955, call Mr. S. W. Bone, chairman of this committee of six?

A. I don't recall, but I may have. I don't remember the date.

Q. Do you recall calling Mr. Bone and telling him there was about to be a strike of the Parmelee drivers?

By Mr. Thompson: We object to that as improper rebuttal. I don't know what it rebuts.

1780 By the Court: Objection sustained.

By Mr. McConnell: Well, there was testimony

here that one of the things that the committee was concerned about was labor troubles, and I want to show where they originated.

By the Court: He may answer.

By the Witness: What was the question?

By Mr. McConnell: Read the question.

(Record read as above recorded.)

By the Witness:

A. That was not the essence of the conversation I had when I talked with Mr. Bone.

By Mr. McConnell:

Q. Did you tell him that you represented the Parmelee Company drivers?

A. Right, and I did.

Q. And did you tell him that you called to tell him that the president of the Drivers Union Local No. 725 had passed away?

A. No; I didn't know the president of Local 725.

Q. You didn't tell him that?

A. No, I don't believe I did.

Q. Well, can you make it any more definite than 1781 that? Did you or didn't you?

A. I did not, to the best of my recollection.

Q. Did you tell him that this man had been very favorable to the Parmelee Company in any wage disputes?

A. Yes, I did.

Q. Did you tell him that the next move would probably be a strike of the drivers and all stations in Chicago would have the appearance of pickets?

A. I told him that under certain conditions. If you want me to elaborate, I will.

Q. Did you tell him that?

A. Yes.

Q. Did you also call Mr. Hastings?

A. Yes, I did.

Q. And he was general counsel of the Chicago and North Western, was he not?

A. Right.

Q. And did you tell him substantially the same thing?

A. No, I did not tell him substantially the same thing as you questioned me. I told him something else.

1782 Q. Did you tell him there was a possibility of a strike of the drivers of Parmelee?

A. Yes, if Mr. Markin continued to refuse to give the men any increase.

Q. Did you represent the union?

A. I did not represent the union. I represented the Parmelee drivers.

Q. What drivers did you represent?

A. A committee of drivers that represented all of the drivers of Parmelee. There was Walter Antiporek, Joseph J. Vitus, Morris Toppel, and there were two others that I can't recall. They were night men.

The other three were day drivers for Parmelee, and they were a committee that represented the Parmelee drivers in negotiations with Mr. Morris Markin for an increase in wages.

Q. All right. Were those drivers members of an A.F. of L. union?

A. Local 725.

Q. And you were not attorney for that union?

A. I was not. In fact, I was in opposition to the union, because the men were objecting to the tactics of the union officials, because they played sweethearts with Mr. Morris Markin for many years.

1783 Q. The first gentleman that you mentioned, the first three gentlemen that you mentioned went over

and became employees of Mr. Keeshin, didn't they, in this company?

A. Yes, sir. There were 50 of them dying and breaking down his doors to become employees of Keeshin.

Q. And these three helped solicit them, didn't they, take them away from Parmelee and take them over to Keeshin?

A. I wouldn't know that, and I don't think so.

By Mr. McConnell: That is all.

Cross Examination by Mr. Thompson.

Q. Mr. Meserow, would you tell us the conversation you had with Mr. Bone sometime in May of 1955?

A. Yes, I will be glad to. This committee of Parmelee drivers whom I represented, and I did not represent Mr. Keeshin at that time, and, in fact, I had no dealings with Mr. Keeshin at all during that time, and I had represented the Parmelee drivers for several years, but they came to me and said that their contract was expiring with the Parmelee Transportation Company on June 30, 1955, and they at that time were getting $1.70 an hour, and they wanted to get an increase because
1784 their particular rate of $1.70 was below the going rate of similar drivers.

They had a meeting of this committee with Mr. Morris Markin at the Blackstone Hotel, and they came back to my office after the meeting, and I sat with them and I said, I asked what was the conversation they had with Mr. Markin, and they told me they asked him for an increase in pay.

They didn't like the split shift that they had. They had no health and welfare and pension fund, but they merely asked him for an increase in wages, and he sang the blues to them and cried and said he had no business,

and he couldn't afford to give them an increase, and he refused to give them an increase.

They then had a meeting with, and this is the conversation that I told to Mr. Lowell Hastings, the general counsel of the North Western Railroad, a personal friend of mine for many years, and Mr. Joe Wright of the Illinois Central, general counsel, Mr. Bone of the New York Central and one other, I have forgotten who, one other representative.

1785 I told them of this instance, and then I told them that the Parmelee Drivers' Committee had a second meeting with Mr. Markin at the Blackstone Hotel, and after much wrangling Mr. Markin finally consented to give these men a three cent per hour increase, and they told Mr. Markin, and they came back and told me, that if he persisted in only three cents as an increase, that they would go on strike and picket the stations.

I called up these four gentlemen representing the railroads, and I told them this; that I did not care, and I didn't care who got the Railroad Transfer contract, whether it was Mr. Keeshin or Parmelee, but I was only interested in the welfare and the wages of these Parmelee drivers, but in all fairness to them they should know that if Mr. Markin did not increase his offer of three cents, that they would go on strike and picket the stations, and that was the end of my conversations with them.

Q. Was the conversation with each of these persons substantially the same?

A. Substantially the same, yes.

Q. Did the Parmelee drivers that you repre-
1786 sented go to work immediately for Keeshin on October 1, 1955?

A. No, not all of them.

Q. Over what period of time were these transfers of employment going on?

A. I know of one that didn't go to work until the following March.

Q. Well, that was after they went over to Keeshin's employment after Parmelee Transportation Company failed to get the contract and after Keeshin did get it?

A. That is correct. They told me after, I believe it was June 13 when the decision was made by the railroads, that they were all concerned about their livelihood, and that they had no place to go, and Mr. Markin tried to keep them in his organization by a bunch of promises which never materialized, and they had no place to go, so they naturally would turn to Keeshin for employment.

Q. What was the occasion of your employment by Mr. Keeshin in September, I think you said, 1955?

A. In the latter part of September. I had been general counsel for the Illinois Commerce Commission for six years while I was an assistant attorney general,
1787 and he employed my services at that time to file the authority to transfer baggage in the State of Illinois, and I appeared before the Illinois Commerce Commission in Springfield, I believe it was on the 29th or the 28th of September, 1955, to handle that for Railroad Transfer Service, Inc.

Mr. Keeshin and his company, Railroad Transfer Service, were represented by Benjamin F. Goldstein, a former witness here. He was Mr. Keeshin's attorney at that time.

Q. And that was the beginning of your employment with Mr. Keeshin at the end of September of 1955?

A. That is correct.

By Mr. Thompson: That is all.

Redirect Examination by Mr. McConnell.

Q. Who were these four people that you talked to?

A. Well, it has been a long time. I mentioned three. There was Joe Wright of the Illinois Central, General Counsel, Lowell Mastings, General Counsel of the North Western. I don't remember talking to Mr. Bone, but if he said I did, then I did.

I may have talked to an attorney in his office, in
1788 the New York Central office, and the fourth one, I do not remember.

Incidentally, my purpose and motive in calling these gentlemen was to put a little pressure on Mr. Morris Markin so he would come up in his offer of wages. That was the sole purpose.

Q. These people that you talked to were all members or all their roads were represented on this committee of six, were they not?

A. I didn't know it at the time.

Q. You know it now?

A. Well, from being an attorney in the case, yes, I know it.

Q. They were, weren't they? That is all I asked you, whether or not they were members of the committee.

A. Well, let me see—the New York Central, the North Western, the Illinois Central—three of them were, and I don't know who the fourth one was.

Q. The three that you remember were on the committee of six?

A. I knew nothing about the committee.

Q. I didn't ask you that.

A. You called me as a witness, and now I will answer you. At the time I didn't know anything about com-
1789 mittees or anything else. All I was interested in was my clients, the Parmelee drivers, and since the trial,

yes, since I have been in this case I know about the committee of six.

1790 Q. All right. And they were on the Committee of Six, were they not?

A. Yes.

By Mr. McConnell: All right. That is all.

By Mr. Thompson: That is all.

(Witness excused.)

By the Court: Call your next witness.

By Mr. Meserow: Is it all right if I return to my role here?

By Mr. McConnell: I want to read from the deposition of Mr. Keeshin, which was taken as an adverse witness prior to trial. I want to read from page 2765:

JOHN J. KEESHIN, called as a witness herein, on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell (Reading).

"Q. How long has Mr. Meserow represented you?

A. Oh, Mr. Meserow represented me either late in 1954 or early 1955; I don't remember.

Q. And he still represents you?

1791 A. Yes, sir."

By Mr. Owens: Objection, your Honor, and I move that this be stricken. Mr. Meserow was not called as an adverse witness here. He was put on as Mr. McConnell's witness.

By Mr. McConnell: That is right. That shows the agency. That is what I have offered it for.

By the Court: Objection overruled. It may stand.

By Mr. Freeman: Your Honor, I would like to read to

the jury portions of the deposition of Mr. Richard E. Coleman, who was identified in this record as traffic passenger manager of the Baltimore and Ohio Railroad. His deposition was taken on January 25, 1957 in Chicago, Illinois.

I read from page 1619—

By Mr. Tone: Will you wait just a moment, please?

By Mr. Freeman: Surely.

Are you ready?

By Mr. Thompson: Yes.

1792 By Mr. Freeman: The witness was sworn and testified as follows:

RICHARD E. COLEMAN, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. Freeman (Reading).

"Q. Will you state your name?

A. Richard E. Coleman.

Q. And your address?

A. 9152 South Claremont Avenue, Beverly Hills.

Q. And your occupation?

A. Traffic passenger manager of the Baltimore and Ohio Railroad, Chicago.

Q. How long have you held that position?

A. Since February 1, 1946.

Q. You succeeded Mr. Whittington?

A. That is correct.

Q. As part of your duties Mr. Coleman, did you have anything to do with the transfer of passengers among stations in the City of Chicago?

A. I had the general supervision over it. The actual detail of it was conducted in our office by Mr. Nelson.

our assistant general passenger agent here, my next
1793 assistant.

Q. In the normal routine, did he handle the contacts with the transfer company?

A. Yes, sir.

Q. Did you handle any such contacts yourself?

A. Not directly, no, sir.

Q. Was Mr. Nelson your representative on the committee of railroads which conducted negotiations with transfer companies from time to time?

A. That is correct. He was the member representing the B&O on the sub-Committee of Six."

By Mr. Thompson: I don't see what this rebuts. We object to this as not proper rebuttal testimony.

By Mr. Freeman: It goes to Mr. Whittington's testimony, your Honor.

By the Court: It doesn't have to be, as I understand the rules, a deposition taken of an adverse witness—oh, your objection is that it is improper?

By Mr. Thompson: Improper rebuttal. It doesn't rebut anything.

By the Court: Let's see what it impeaches, if anything.

1794 By Mr. Freeman: It deals with Mr. Whittington's testimony.

By the Court: Objection overruled.

1795 By Mr. Freeman: (Reading)

"Q. Was he also the man representing the B&O on the committee of twenty-one of the Chicago Terminal Lines?

A. He represented in my name, and Mr. Whittington as the head of our department represented the railroad.

Q. And did Mr. Nelson attend, to the best of your knowledge, all of the meetings of the committee of six and

also of the Chicago Terminal Lines, insofar as they dealt with the transfer subject?

A. To my knowledge, I think he attended every one of them.

Q. Prior to May 19, 1955, did you attend any of those meetings?

A. I did not.

Q. The various documents which are in the file of the Chicago office of the Baltimore and Ohio Railroad dealing with this subject, bearing your typewritten name at the bottom, is it correct that either all or substantially all of those documents were actually prepared by Mr. Nelson?

A. Substantially all, yes, sir.

Q. Might it even be possible that he prepared all 1796 of them?

A. I might have written one, but anything that had to do with the actual details of these negotiations, as a result of what had transpired at one of these committee meetings, that was written by Mr. Nelson."

By Mr. Thompson: If the Court please, this is a waste of time. There is nothing being rebutted.

By Mr. Freeman: I turn to Page 1623. Your Honor, it will be connected up.

By the Court: All right. I haven't heard it yet, but I will let you go ahead.

By Mr. Freeman: You will recall, your Honor, that Mr. Whittington testified that he got all of his information from Mr. Coleman, and one of the important things in his mind was the matter of financial reports from Keeshin. This goes to that. Mr. Coleman is now testifying as to what information he possibly could have had in 1955, which he possibly could have imparted to Mr. Whittington, and I would like you to listen to it.

1797 By the Court: It is something that goes to the jury.

By Mr. Thompson: It comes from Nelson through Coleman.

By the Court: I don't want to comment on it because it is evidence. I will leave it to the jury.

By Mr. Freeman: (Reading)

"Q. Do you recall prior to May 19, 1955, ever stating to Mr. Nelson that you felt there had been some serious omissions from the reports he had made?

A. No, sir, I would have no way of knowing that.

Q. To the best of your knowledge, his reports were complete and accurate?

A. In my opinion, yes.

Q. Do you recall ever giving him any instructions or relaying any instructions to him to make a specific analysis of the Keeshin proposal?

A. Not any more than we were examining all of the proposals.

Q. You don't recall any instructions which mentioned the Keeshin proposal separately from the other proposals?

A. No, sir.

1798 Q. How did you happen to go to the meeting of May 19?

A. It was approaching the point where some final decision was going to be made, and I was interested and responsible to the extent that I felt I should be there."

1799 By Mr. Thompson: Where are you reading from?

By Mr. Freeman: Page 1624.

By Mr. Freeman: (Reading)

"Q. When did you make the decision to go to the meeting, if you recall?

A. I wouldn't have any way of knowing that; probably when the date was announced, or it could have been when it was established that I would be in town.

I travel a great deal, my territory consisting of 23 offices in 14 states, and sometimes I am away as much as two or three weeks at a time.

Q. Is Mr. Nelson in Chicago quite consistently?

A. He is here 12 months of the year, except for his vacation.

Q. In other words, he handles the Chicago office and you have jurisdiction over other offices, including the Chicago office, is that correct?

A. He has the general office and operates over my name into the territory.

We have another local office in the Bankers Building that he has no jurisdiction over directly.

Q. Where is the office in which you and Mr. Nelson are located?

1800 A. On the 6th floor of the Grand Central Station.

Q. Did you have any conversations, and I don't mean to include the actual meetings themselves, with representatives of other railroads on this subject matter of transfer of passengers?

A. Nothing specific, no, sir, that I can recall.

Q. Did you have any conversations with Mr. Bone?

A. No, not that I can recall.

Q. How did you know that the matter was approaching a conclusion which warranted your personal attendance at the meeting sometime before May 19th, Mr. Coleman?

A. Mr. Stevens, the committee had started off by a request through the representatives of the six terminal lines that each railroad be instructed to contact their local carrier; for example, in the B&O's instance, the P. D. Carroll Company, who does all of our work, and through a process of elimination, it finally simmered down to where the three firm bids that we had towards the end of the negotiations were the Parmelee company, the Keeshin and

the Willett, and as I recall it, Willett withdrew just a few hours before the meeting of May 19th.

Q. How did you learn that Willett had withdrawn?

A. As I recall it, Mr. Nelson mentioned to it me.

1801 Q. Do you recall if he told you how he knew?

A. No, sir, I don't think he did, no.

Q. And you attended the meeting of May 19th?

A. Yes.

Q. Did you have any conversations with Mr. Whittington either in person or over the telephone on this subject matter prior to that meeting, or shortly prior to that meeting?

A. I can't recall anything specific, Mr. Stevens.

Q. You did attend the meeting of May 19th?

A. Yes, sir.

Q. Did you sit with Mr. Nelson and Mr. Whittington at that meeting?

A. That is correct.

Q. Did you take any notes at that meeting?

A. No, sir."

By Mr. Freeman: Then I turn to page 1630.

By Mr. Thompson: We move to strike everything up to now as improper rebuttal.

By the Court: I will ask the jury to regard only that which they think is impeaching a witness. I don't know which part, and they have heard the evidence. Let them decide.

By Mr. Freeman: Page 1630.

1802 By Mr. Freeman: (Reading)

"Q. I want to be sure I understand you. First, will you tell me when—"

By Mr. Freeman: I will go back a question.

By Mr. Freeman: (Reading)

"Q. After the meeting of May 19th, and while Mr. Whittington was still in Chicago during the next day or

two, did you have any discussions with him on this subject matter?

A. Only in a general way that at that time we were very much impressed by what the Keeshin proposal was.

Number 1: That they had offered to purchase new equipment—

Q. Excuse me, Mr. Coleman: I want to be sure I understand you. First, will you tell me when this discussion took place and where it took place?

A. It could have occurred anytime during the day of the 20th. Mr. Whittington was here the next day.

Q. Were you with him during the day?

A. I was with him a greater portion of the day, yes.

1803 And during that day did you have a conversation with him about this subject matter?

A It would just be a natural exchange of conversation. We didn't sit down and conduct a conference on the subject.

We were actually over at the Merchandise Mart and probably were going to and from there, walking or riding, when we had discussion.

Q. Can you recall now what you said and what he said on that subject at that time?

A. I would say the general substance of it was that it appeared that the Keeshin proposal on the face of it was their offer to provide new equipment and give us a new look here in the transfer business, and particularly their offer to open their books to us at the end of a specified period was something that we had been looking for for a long time.

Q. Which one of you was it that made these remarks?

A. I think we mutually agreed to that, Mr. Stevens."

By Mr. Freeman: Then I turn to Page 1639—well, no, Page 1643:

By Mr. Freeman: (Reading)

"Q. Then you attended a meeting on June 3rd, the following day, I take it?

1804 A. Yes, sir.

Q. Did you meet with Mr. Whittington ahead of that meeting?

A. Mr. Whittington, as I recall it, came in on the Capitol that morning and he has a custom of going to the Union League Club. I live out south and the meeting was probably scheduled at ten o'clock, a.m. To the best of my recollection, I picked him in a cab at the Union League Club and we continued on over to the Union Station where the meeting was held."

By Mr. Freeman: Then on Page 1654:

By Mr. Freeman: (Reading)

"Q. Since October 1, 1955, Mr. Coleman, have you followed the conduct of the transfer business in Chicago?

A. Yes, sir.

Q. Are you familiar with the air conditioning equipment which was actually put into use?

A. From a mechanical standpoint?

Q. Well, just from a passenger standpoint as to how it worked, and so forth.

A. I don't think it has been wholly successful. I do think it has contributed something to the comfort

1805 of passengers in very warm weather, but actually last summer was not comparable to 1955.

Q. You mean it wasn't as hot?

A. We didn't have as much hot weather last summer as we did in '55.

Q. So it wouldn't have been as important in 1956 as it was in '55?

Did you personally make any checks of the working of the air conditioning?

A. No, sir.

Q. Did you ever ask any of your subordinates to make any such check?

A. As far as the station boys are concerned, they are conversant with it. We have station passenger agents and Mr. Nelson is conversant with it. I have never ridden in it, but I have noticed the equipment. I am a Rock Island commuter and I have noticed the equipment at LaSalle Street station as well as our own, but it is just like a heater in a car; on a very cold day it doesn't make you as comfortable as we are in this room, but it contributes something to your comfort where you have any form of air conditioning.

Q. Did you ever get any specific reports on the 1806 working of the air conditioning equipment?

A. No, sir, not on that subject.

Q. Was the equipment that you saw on June 2nd air conditioned?

A. No, sir.

Q. Did you ever ask for a specific report on the working of the air conditioning equipment?

A. I don't recall that I did, no, sir."

By Mr. Freeman: Then, finally, on Page 1658:

By Mr. Freeman: (Reading)

"Q. Since the execution of the contract with Mr. Keeshin's company on October 1st, have you made any inspection of Mr. Keeshin's financial statements?

A. No, sir.

Q. Do you know if Mr. Nelson has?

A. No, sir.

Q. You mean you don't know or you know he has not?

A. Since October 1st?

Q. Yes.

A. No.

Q. I am still not clear whether you mean you don't know or whether you know he has not made such an inspection.

1807 A. I have no knowledge of his having made any.

Q. At least you never asked him to make any?

A. No, sir.

Q. Do you know if any such statements have been submitted to Mr. Whittington for examination?

A. Let's get back to the date now, Mr. Stevens.

Q. Since October 1, 1955.

A. No, sir.

Q. You don't recall sending any such statements to Mr. Whittington?

A. I don't recall any.

Q. You don't recall Mr. Whittington asking for any such statement?

A. No, sir.

Q. So, to the best of your information, no representative of the B&O has made any examination of Keeshin's financial operation since October 1, 1955?

A. No, sir."

By Mr. Freeman: That is the end of my reading of Coleman's deposition.

I would like now to read certain excerpts from the deposition of Mr. Quackenbush, going only to comparisons of service, and in rebuttal to the testimony of

1808 Mr. Padrick.

I will start on Page 161—

By Mr. Thompson: Just a moment.

By Mr. Freeman: And I call Mr. Quackenbush as an adverse witness.

There has been no offer of proof through Mr. Quackenbush on this section, and neither has there been any reading of his deposition on this particular issue.

1809 By Mr. Thompson: If the Court please, I don't know why counsel seems to be making an argument.

I just want to call attention to the fact that the deposition of Mr. Coleman was taken on January 25, 1957, which is a year and a couple of months after the Keeshin business started.

By Mr. Freeman: I thought I made that clear.

By Mr. Thompson: The financial statements came a year later.

By Mr. Freeman: He is not making an argument.

By the Court: Proceed.

By Mr. Freeman: I will start on page 161, your Honor.

"CHARLES E. QUACKENBUSH, called as a witness herein on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman (Reading).

"Q. To get back to the question of the transfer charge, or the coupon rate as it is generally called, weren't you primarily interested in what that coupon rate would be?"

By Mr. Freeman: Oh, I should identify this deposition.

We read parts of it previously. This was taken 1810 November 8, 1956 before a notary public in Chicago.

The witness was duly sworn and he did testify under oath, pursuant to my examination.

By Mr. Freeman: (Reading)

"A. Mr. Freeman, anything involving the North Western Railroad in regard to costs, we are always interested in it."

By Mr. Thompson: If the Court please, this is not rebuttal of anything. This is just reading all over again the same thing that they have been over. They had Mr. Quackenbush's deposition and read it before, all they wanted to read, on their direct. Now they come in on rebuttal.

By the Court: I will have to rely on your representation that this is rebuttal.

By Mr. Freeman: I am an officer of this court, and I make that representation.

By the Court: I am not questioning it. I say on that objection I have to rely on your representation that it is part of the rebuttal.

I want to explain to the jury what the objection is
1811 so they will know. There are certain rules which pro-
hibit the going in of new matter in rebuttal. If it is new matter you disregard it. If it has any tendency to impeach something, they have a right to put it in, and I don't want to comment on your prerogative. It is up to you folks to pass on that one question.

Is that clear?

By Mr. Freeman: Thank you, your Honor.

I had better read the question over again.

By Mr. Freeman: (Reading)

"Q. To get back to the question of the transfer charge, or the coupon rate as it is generally called, weren't you primarily interested in what that coupon rate would be?

A. Mr. Freeman, anything involving the North Western Railroad in regard to costs, we are always interested in it.

Q. It was of vital importance to you, that cost element, wasn't it?

A. Yes. Any cost is of vital importance to us.

Q. And so, the question of any increases in costs
1812 either in the amount of the coupon rate or in the
collateral services that the railroad would have to perform, would be of vital interest to you as the North Western's representative in these negotiations?

A. It would be of vital interest to us."

1813 By Mr. Freeman: Then I turn to Page 163:

By Mr. Freeman: (Reading)

"Q. Did you at any time during January 1st to May 13th check the financial status of Mr. Keeshin, his financial background?

A. I, as an individual for our company, tried to secure all the information I could on Mr. Keeshin.

Q. What information did you secure with respect to his financial status?

A. Financial.

Q. When did you secure this financial information?

A. When did I? Well, I had secured some of it—I don't know just exactly when. Some of it was about his, I believe, his bankruptcy."

By Mr. Freeman: Then I turn to—

By Mr. Thompson: We object to that and move to have it stricken. They have hinted at that half a dozen times. There is no evidence whatever of any—

By Mr. Freeman: This is evidence, his testimony under oath.

At Page 170—

By the Court: Overruled. Proceed.

1814 By Mr. Freeman: (Reading)

"Q. Had you been satisfied with the Parmelee service up until that time—"

By Mr. Thompson: Where is this?

By Mr. Freeman: I will go back to Page 169. The question related to May 1955, and now this question, Page 170:

By Mr. Freeman: (Reading)

"Q. Had you been satisfied with the Parmelee service up until that time?

A. Yes, we had, to the best of my knowledge at least.

Q. Did you ever discuss with Mr. Brennan or did you ever—let me leave it at that. Did you ever discuss with Mr. Brennan the financial ability of Parmelee to render the service that was rendered?

A. I think he was aware of that. I don't recall that I ever discussed it.

Q. Was there ever any question in your mind, for example, Mr. Quackenbush, about the financial ability of Parmelee to conduct the services it was conducting?

A. No."

By Mr. Freeman: Then I turn to Page 172, the 1815 bottom of the page:

By Mr. Freeman: (Reading)

"Q. You had always had rather straightforward dealings with Parmelee, had you not?

A. To the best of my knowledge."

By Mr. Freeman: Then on Page 174:

By Mr. Freeman: (Reading)

"Q. In the past when you had any problem involving the Chicago transfer situation had you any difficulty contacting somebody at Parmelee who would be an authority to handle that problem?

A. I don't recall that I ever have.

Q. You always had Mr. Scheeder or Mr. Krock or Mr. Passolt who were ready and available at a moment's notice to handle whatever problem you had, did you not?

A. I was always able to get ahold of somebody to resolve it.

Q. And resolve it rather promptly?

A. That is right.

Q. You went to the meeting of the subcommittee on May 19th?

A. That is correct.

Q. And you were accompanied to that meeting by 1816 Mr. Brennan, were you not?

A. That is right.

Q. And this was the first—was this the first time that Mr. Brennan ever attended a subcommittee or committee meeting to your knowledge?

A. On this particular subject?

Q. On the Chicago transfer subject.

A. Yes, it was."

By Mr. Freeman: Then on Page 179:

By Mr. Freeman: (Reading)

"Q. What happened at the May 19th meeting?

A. Well, Mr. Markin—Mr. Keeshin was there in the morning and presented his proposal and we had the opportunity of asking any questions we so desired at that meeting, and Mr. Markin came down in the afternoon and presented his proposal. We also had the opportunity of putting questions to him.

Q. Did you know what the reaction of the committee was to the proposals that were presented?

A. No, I did not."

By Mr. Freeman: Then on Page 180:

By Mr. Freeman: (Reading)

"Q. Did you prepare a memorandum indicating the proposals that were presented up to and through May
1817 19 and your reactions and recommendations with respect to the two carriers that were left, Parmelee and Keeshin?

A. A memorandum to who?

Q. For Mr. Brennan's signature and addressed to Mr. Small.

A. That was a letter.

Q. You did prepare a letter?

A. I assisted in the preparation of it.

1818 Q. Is this document which I now hand you, and which has been previously been identified as Brennan's Exhibit No. 2, the memorandum or letter that you prepared or assisted in preparing?

A. Yes, it is."

By Mr. Freeman: And that document has been identified here as Plaintiff's Exhibit No. 2, and I will want to offer it as soon as I get through with this deposition.

By Mr. Freeman: (Reading)

"Q. Who else assisted you?

A. Mr. Stewart.

Q. Did Mr. Brennan assist you?

A. Oh, yes. We prepared a draft and the three of us discussed the draft."

By Mr. Freeman: And then on page 182, in the middle of the page.

By Mr. Freeman: (Reading)

"Q. Did you have a discussion with Mr. Brennan of the draft and the subsequent memorandum that was prepared and has been identified as Brennan Exhibit No. 2?

A. Well, the three of us were all in on it. Naturally it was discussed.

Q. Did you discuss the matter of equipment?

1819 A. Yes.

Q. And did you discuss the matter of relative cost of the transfer coupon?

A. That was discussed."

By Mr. Freeman: And then on page 193.

By Mr. Freeman: (Reading)

"Q. When were you first advised by Mr. Brennan that the North Western was going to vote for Keeshin?

A. When we were on our way to the meeting June 3rd."

By Mr. Freeman: On page 199.

By Mr. Freeman: (Reading)

"Q. You had never had any difficulty enforcing any obligation against Parmelee without contracts as long as there was an agreement of understanding?

A. That is right. We ran over 100 years without a contract.

Q. And during that hundred years was there ever an instance when Parmelee's commitment was violated with respect to any financial obligation it undertook?

A. Not that I am aware of."

By Mr. Thompson: I should think obviously a great deal of it is hearsay.

By the Court: Proceed.

By Mr. Freeman: Page 202.

1820 By Mr. Freeman: (Reading)

"Q. Isn't it a fact, however, that Keeshin is rendering less extensive service?

A. What do you mean by less extensive service?

Q. That is, that it is not carrying passengers from the North Western depot to destinations in the central business district like hotels?

A. That is correct.

Q. Is it not a fact that the Keeshin service does not perform pickup and delivery services on Sundays which was the policy with respect to Parmelee?

A. That, I don't know.

1821 Q. Did you receive a request shortly after June 13th by Mr. Keeshin to provide for the payment of his bills semi-monthly, rather than monthly?

A. We did.

Q. And did you consider that request?

A. We did.

Q. And did you abide by it?

A. We did.

Q. And would that involve additional accounting expenses on behalf of the railroad?

A. That—

Q. —is the accounting department?

A. That is right. That is the accounting department. I have nothing to do with it.

Q. In your activities in the passenger traffic department, haven't you from time to time been advised of the tremendous accounting expense that various phases of your passenger operations entails?

A. Yes."

By Mr. Thompson: If the Court please, obviously none of it is in rebuttal to anything. They had a chance to put on their case and had a week and a half to do it.

They read part of the deposition, and they are read-
1822 ing it all over again. I suppose we will have to start in on surrebuttal to finish this.

By the Court: I will let them finish it, and I will reserve my ruling.

By Mr. Freeman: Page 208:

By Mr. Freeman: (Reading)

"Q. At these meetings did you or your North Western representative, legal department representative, suggest the inclusion of a termination clause for failure of Keeshin to provide the type of service that he had undertaken to provide?

A. I think the entire committee was in accord on such a termination clause.

Q. That it should be included?

A. Yes, sir.

Q. Do you know whether such a termination clause was included in the contract?

A. I believe it was. I don't have a copy of the contract before me.

Q. But you don't know whether or not the termination clause was in or out of the contract as finally drafted?

A. I don't at the moment, unless I see the contract.

Q. Would you regard it as an important factor in
1823 the contract?

A. I would.

Q. Did you suggest that the contract contain a specification of the type of equipment and most particularly the fact that it would be air conditioned?"

By Mr. Keating: Your Honor, I object. I think the contract is in evidence, and it speaks for itself.

By the Court: Let him finish it.

By Mr. Freeman: (Reading)

"A. My recollection is that we did.

Q. Do you know whether the contract contained such a specification of the type of equipment to be afforded?

A. Not without seeing it, I wouldn't be positive.

1824 By Mr. Freeman: Page 210.

By Mr. Freeman: (Reading)

"Q. Now, I will turn to the equipment that was suggested and proposed by Mr. Keeshin and ultimately put in operation on October 1st. As I understand it, you were opposed to the use of the Volkswagon?

A. That is right.

Q. Mr. Keeshin nevertheless put ten Volkswagons in operation on October 1st?

A. That is right, he did.

Q. But he abandoned them in January?

A. He did.

Q. And was one of the reasons for the abandonment the fact they were not comfortable for the operation of passengers?

A. I don't know. They weren't air conditioned, and I told him I didn't want them over at the North Western station."

By Mr. Freeman: Then on page 212.

By Mr. Freeman: (Reading)

"Q. Had they made any investigation concerning whether the station wagons were air conditioned during the summer?

A. Who is 'they'?

1825 Q. The agents associated with you, people with you or under you?

A. I don't know."

By Mr. Freeman: Page 219, your Honor.

By Mr. Freeman: (Reading)

"Q. Were one of the features that you were told about in the equipment that was to be supplied, the radio dispatch central control that Mr. Keeshin proposed? Was that a feature?

A. Yes, that was a feature.

Q. Was that something that interested you or Mr. Brennan, that you know of?

A. I don't know whether it interested Mr. Brennan or not. It interested me to some degree. It was just an added feature.

Q. Wasn't it true that the limousines had the passenger —"

By Mr. Thompson: Just a minute. Where are you going to now?

By Mr. Freeman: It is page 219. My pages were reversed. I am on page 219 now.

By Mr. Freeman: (Reading)

"Q. Wasn't it true that the limousines had the passenger compartments separate and apart from the
1826 baggage compartments so that you could put baggage in and out of the back without exposing the passengers to the elements?

A. Yes, sir.

1827 Q. The station wagons, in contract, in order to put the baggage in, you had to lift the back of the car and the entire vehicle was open, wasn't it?

A. The back part of it was open.

Q. So that if there was a cold gust of wind, it would go in and encompass the passengers?

A. That is right.

Q. Did you make any investigation of the garage and maintenance facilities that were going to be provided by Keeshin for the station wagons and Volkswagons?

A. No, sir.

Q. Were you interested in the cleanliness of the vehicle?

A. Yes, Sir.

Q. Did you ever make an inspection of the station wagons?

A. Yes, sir."

By Mr. Freeman: Now I go to Page 220.

By Mr. Freeman: (Reading)

"Q. Do you know whether radio control of these station wagons has been in operation since October 1st or have they abandoned it?

1828 A. I don't know.

Q. Do you know what type of dispatch system Parmelee maintained?

A. I thought theirs was a phone dispatch system.

Q. And they had an agent in attendance at each phone at each station, and a central switchboard, did they not?

A. I know they had an attendant there, and I know they had a telephone. As far as our station is concerned, as to whether they had a central dispatch board or that—

Q. You don't believe they did?

A. I don't believe I have ever seen it."

By Mr. Freeman: At the bottom of the page:

By Mr. Freeman: (Reading)

"Q. Do you think that a central dispatch system would be an improvement over what Parmelee's method was in dispatching cars to points where they were needed?

A. I have never studied the matter, so I couldn't answer.

Q. In the past, whenever there was a traffic problem presented at any station, Parmelee responded by its

1829 dispatch system that it had, did it not?

A. That is right."

By Mr. Freeman: Now on Page 226.

By Mr. Freeman: (Reading)

"Q. How about the matter of rates on unchecked baggage, and here I refer to instances where split, so-called split rides through Chicago are used, where the passenger did not check through baggage but then decides that he wants the transfer company to transfer his baggage from one station to another after he gets to Chicago.

1830 Do you know what the practice was with respect to Parmelee as compared to what the practice is in the case of Keeshin?

A. Can you quote an example?

Q. Yes. It is my understanding and see if this accords with your recollection: That a passenger who came off the North Western Station and had four bags but didn't have a transfer coupon and asked that the bags be transferred to another station and be checked, that they would be checked through at the cost of a single transfer coupon, whatever the going rate was. Does that accord with your recollection?

A. That is right.

Q. But that Keeshin provides a rate of $1.20 for the first piece and 50 cents for each additional bag or 75 cents for each additional trunk and that if the passenger has more than one bag, he pays more?

A. That is what he asks for, yes.

Q. Isn't that what has been approved by the committee and by the Chicago Terminal Lines?

A. It has been approved by the Chicago Terminal Lines, although at that one particular meeting—

Q. You raised some objection?

A. Yes, sir.

1831 Q. But they, nevertheless put it through, didn't they?

A. That's right.

Q. And the meeting at which you raised the objections

was May 2, 1956, as this record would show; would that be approximately right?

A. That would be approximately right. It was in the spring.

Q. As a matter of fact, wasn't it the ultimate conclusion of the committee that Keeshin would be permitted to quote whatever they desired on that service or any other service that wasn't directly paid for by the railroads?

A. I don't recall whether we went that far or not."

By Mr. Freeman: (Reading)

By Mr. Freeman: On page 237.

"Q. Had you ever attended meetings of the Chicago Terminal Lines at which various railroads raised questions with respect to the type and character of service being rendered and complained against the service?

A. Yes.

Q. And were those meetings held in November and almost every other month since?

A. I don't know when they were held.

1832 Q. But there has been several of these meetings at which—

A. Yes, there have been meetings at which it has been discussed.

Q. And in which criticism has been directed against Keeshin?

A. No.

Q. Well, no, wait until I finish my question.

A. Excuse me.

Q. In which complaints were directed against the service that was provided by the Keeshin company?

A. It may have been discussed at meetings.

Q. Well, it is not an exact answer to my question. Or, let me put it to you again. I have asked you whether you didn't attend several meetings at which various railroad

representatives complained against the character of passenger transfer, baggage transfer and pickup and delivery service rendered by the Keeshin organization.

A. I probably was there.

1833 Q. And you remember that such complaints were raised?

A. I have heard some talk."

By Mr. Freeman: And that is all with Mr. Quackenbush.

(Witness excused.)

By the Court: All right; I will now rule that that which is duplication or duplicatious may be stricken, and that which you consider as rebuttal, you may regard as proper.

It is a long document, and I can't take sentence by sentence, so I think it is entirely up to the jury.

It is improper if it has been done before and could have been done before the end of the main case. If it is rebuttal on this case, you may regard it. Otherwise, it is stricken.

By Mr. Thompson: If the Court please, a lot of questions were read which were nothing but speeches to the witness, and the speeches to the witness brought forth, "I don't have any recollection about that. I don't remember," and so on and so forth.

What does that prove?

By the Court: I am sure that has no effect on

1834 the jury, those questions he doesn't remember.

By Mr. Freeman: Let me comment on it. I think it is important to the jury if some issue that was regarded as very important by the defendants—

By the Court: All I said was that it is up to the jury.

By Mr. Freeman: It is significant that a witness will say, "I don't remember," or "I made no investigation" of an issue regarded as important.

By the Court: That is entirely up to the jury.

FELIX A. KROCK, called as a witness by the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Freeman.

Q. Will you please state your name and your address, sir?

A. Felix A. Krock, 1340 South Fairview, Park Ridge, Illinois.

Q. Were you formerly employed by the Parmelee Transportation Company?

A. I was.

1835 Q. How long were you employed?

A. Twenty-five years.

Q. What capacities did you occupy?

A. Several. The last 12 years general superintendent.

Q. What were the duties of the general superintendent?

A. I was in complete charge of operations.

Q. I mean how broad was that authority?

A. It had to do with service, passenger service, baggage and service, city delivery, full jurisdiction of operations.

Q. Did you have any assistants?

A. I did.

Q. How many assistants?

A. Three.

Q. Was Mr. Edward Bayr an assistant of yours?

A. He was.

Q. Do you see him in the courtroom here?

A. Yes, there. (Indicating)

Q. Is that Mr. Bayr?

A. That is Mr. Bayr.

1836 Q. Now, Mr. Krock, in your position with the Parmelee company during the last twelve years, did

you have occasion to make observations and inspections and investigations of the service and operations of both Parmelee and its various competing and collateral transportation companies in Chicago?

A. I did.

Q. How frequently were those investigations and observations made?

A. They were made daily generally, if not by myself, by one of my assistants.

Q. Did Mr. Bayr participate in those investigations and inspections?

A. Yes.

Q. Were any investigations and inspections made of the Keeshin company, the Railroad Transfer Service, Inc. after October 1, 1955?

A. Yes, sir.

Q. Did you make observations and investigations of the matter of the adequacy of the Keeshin transfer service with respect to their ability to move passengers off the stations?

A. I did.

By Mr. Meserow: I object to the question, be-
1837 cause it calls for a conclusion of the witness.

By Mr. Freeman: It is preliminary.

By the Court: He may answer.

By the Witness:

A. I did.

By Mr. Freeman:

Q. Will you tell us of the observations and investigations that were made by you and your department and be as specific as you can by first telling us the times that it occurred, and then we will go into the results that you reached.

A. Well, as far as times, they were made at isolated hours whenever we felt it was advisable to go out and do some checking, generally during what we knew were the busy hours of the day, and it was made at regular intervals.

Q. What years?

A. 19—well, starting in October of 1955 through 1956 and part of 1957.

Q. Did you have some of your assistants assist you in these investigations?

A. I did.

Q. Were regular reports made of these objections?

1838 A. They were, yes.

Q. Was this in line with the regular routine you had followed in connection with the performance of your job with the Parmelee Transportation Company?

A. Yes.

Q. This was no different than what you had done for many years before?

A. No.

1839 Q. Will you tell us what you observed and what your department found with respect to the ability of the Keeshin company to move passengers from the stations?

By Mr. Thompson: If the Court please, we object to that as calling for pure conclusion of the witness.

By the Court: Yes, the form of the question is bad. As to the ability of the Keeshin Company to move traffic, he can only testify as to results.

By Mr. Freeman: This same question was aksed Mr. Bayr, but I am willing to reframe my question here.

By Mr. Freeman:

Q. Will you tell us what you observed and what the results of your observations were?

By Mr. Owens: Objection, your Honor. One of the foundation questions asked was, "Was this the usual type of investigation made by you in the many years of your service?" Obviously, this investigation of Keeshin was being made only after Keeshin started its operation 1840 and Parmelee had ceased.

By the Court: I will let him answer.

By the Witness: What was the question?

By Mr. Freeman:

Q. The results of your observations and investigations.

A. Well, on many instances we found a large number of people standing at loading areas waiting for vehicles which were very slow in arriving or didn't arrive at all. On one specific instance I observed myself, which was on or about December 20, 1955, at the Dearborn station.

Q. 1955 or 1956?

A. 1955. I arrived at the Dearborn station about 8:30 and found around 200 people standing waiting for service, and I stayed there until 9:30, and by that time most of the people had taken cabs or walked away from the station, a little while after 9:30, but there were still twenty people left waiting.

Q. Did any of the people come over to you and ask you any questions?

A. Yes, predominantly service men.

By Mr. Thompson: We object to the hearsay.

By the Court: Objection sustained.

1841 By Mr. Freeman:

Q. Will you give us some other instances of investigations made by your department?

A. On June 20 of 1956 one of my assistants at my direction, Dave Weiner, made a check at the Dearborn station.

By Mr. Thompson: We object to any hearsay of what Dave Weiner told him. Of course, it must be observed

that this was in preparation to file a lawsuit, and the witness spied getting information for this lawsuit.

By Mr. Freeman: Isn't that a nice objection, your Honor?

By the Court: The objection to what somebody else told him is sustained.

By Mr. Freeman:

Q. I want you to tell us the results of your department's investigation. What other incidents did you, as head of your department—what knowledge did you have of any other instances?

1842 By Mr. Owens: Your Honor, I repeat the objection. The business of his department was not to be investigating other people's business operations. His department for years was to run a transfer business from station to station.

If he wants to testify to that sort of operation by his own company, fine, but here now he is running an investigative service and coming in and trying to make a report on it.

By Mr. Freeman: Your Honor—

By the Court: I will let him answer only as to what he personally observed.

By Mr. Freeman:

Q. Will you give us some additional personal observations in line with your investigations?

A. I had observed during the summer of 1956 at the Baltimore and Ohio generally between 7:00 o'clock and 8:00 o'clock, the same conditions, 45 minutes to an hour to get rid of a train, and at the Dearborn Station generally from 7:15 to 8:30, and these are my personal observations.

Q. In what year?

1843 A. 1956.

Q. Were there any observations made in 1957?

A. And some in 1957, through June and July of 1957.

Q. Did you have occasion to make these trips frequently?

A. I did.

Q. How frequently would you say?

A. Practically daily I would get out to the stations at one time or another.

Q. Do you know how many vehicles Keeshin operated as compared with the number of vehicles you operated?

A. Offhand, I do not know.

Q. Would the number of vehicles in service have helped to move passengers?

A. Definitely.

Q. If there were a greater number, it would facilitate the movement of passengers?

A. Yes.

Q. How many vehicles did Parmelee maintain in its service in 1955, do you recall?

A. 85 vehicles.

Q. Passenger vehicles?

A. That is correct.

Q. Now Mr. Krock, did you also have occasion
1844 to investigate the use or non-use of air conditioning on these Keeshin station wagons during the summer of 1956 and the summer of 1957?

A. I did.

Q. Will you tell us the nature of those observations and the investigation that you conducted and what results you found?

A. Well, whenever the weather got hot I went out either at the station or someplace where I could—where I could be at a vantage point, and I have checked as high as 24 vehicles driving around with their windows open, and obviously the air conditioners weren't working.

By Mr. Owens: Objection to that.

By the Court: Objection sustained as to the obvious.
By Mr. Freeman:

Q. Just say what you saw.

A. 24 vehicles with the windows open, and on another occasion I checked 14 vehicles, and the only two I found with windows closed, one was a passenger vehicle that the supervisor was driving.

1845 Q. In all of your investigations—did you attempt to make an observation of air conditioning service?

A. Yes.

Q. Approximately once a week during 1956 and 1957 when the weather was hot?

A. Yes, when it got hot.

Q. In all of these observations that were made in 1956 and 1957 did your department uncover any instance where a station wagon was in operation with the windows closed?

A. Yes.

By Mr. Owens: Objection to his department, to what his department did.

By the Court: Objection sustained.

By Mr. Freeman:

Q. What did you find in all of these observations with respect to the windows being opened or closed during the hot days in the summer of 1956 and 1957?

By Mr. Meserow: I object to what he found of all of these. Let him pin it down.

By the Court: I am limiting it to what he personally knows and observed.

By the Witness:

1846 A. I just got through saying that in all of my observations I only saw two vehicles with the windows closed in all my personal observations, and one was driven by a supervisor.

Q. And in all other instances?

A. The windows were wide open.

Q. What were the weather conditions gnerally during those days?

A. We would never go out unless it was hot, 85 or 90 degrees.

By Mr. Freeman: I would like to identify several reports, without indicating what their contents are, a report of June 16, 1956, as Plaintiff's Exhibit No. 120, a report of August 4, 1956, as Plaintiff's Exhibit No. 121, and a report of June 18, 1957, as Plaintiff's Exhibit No. 122.

As Plaintiff's Exhibit No. 123, this report of June 21, 1957, and as Plaintiff's Exhibit No. 124, this report of July 2, 1957. As Plaintiff's Exhibit No. 125, this report of July 1, or rather, July 11, 1957.

1847 As Plaintiff's Exhibit No. 126, this report of July 9, 1957.

(Thereupon said documents were marked Plaintiff's Exhibits 120 to 126, inclusive, for identification.)

1848 By Mr. Freeman:

Q. I show you these documents that have been marked numerically as Plaintiff's Exhibits 120 to 126, inclusive. Were those reports prepared in your department?

A. That is correct.

Q. Were they prepared pursuant to your direction and supervision?

A. That is correct.

Q. Were they prepared as part of the reports that were prepared by your department in the normal course of your functions as a supervisor?

A. That is correct.

Q. Were the individuals who prepared these reports working for you and under your direction?

A. That is correct.

Q. Were these maintained in the regular files of the company?

A. Well, these were maintained in my own file.

Q. And were your files the files of the Parmelee company?

A. That is right.

Q. Do these reports have to do with an investigation of the operation of air conditioning equipment—

1849 By Mr. Thompson: We object.

By Mr. Freeman: I just want to identify these.

By Mr. Thompson: They speak for themselves, your Honor, and we object to any statement by counsel which is obviously wrong.

By the Court: Let him finish his question.

By Mr. Freeman: I would object to the statement that it is wrong.

By Mr. Freeman:

Q. Were these reports made to you of investigations—

By Mr. Thompson: We object to anything that has to do with the content of a document. They speak for themselves.

By Mr. Freeman: I am not speaking of the contents of the documents.

By Mr. Freeman:

Q. Were these reports made to you dealing with the utilization or non-utilization of air conditioning equipment by the Keeshin transfer company?

A. They were.

By Mr. Thompson: We object to that as being hearsay.

By Mr. Freeman: I don't know what he is talking

1850 about. I offer in evidence Plaintiff's Exhibits 120 to 126, inclusive.

By the Court: The objection will be sustained.

By Mr. Thompson: Objection on the ground of hearsay and—

By the Court: The objection will be sustained to their admission.

By Mr. Freeman: Thank you, your Honor.

By Mr. Thompson: Just a minute, please, counsel.

We object to them as hearsay, and there has been no proper foundation laid for them.

By the Court: I have sustained the objection.

By Mr. Freeman: He likes to talk.

By Mr. Thompson: I couldn't hear the Court with three people behind me chattering.

By the Court: I am excluding them, and in addition to your objection I am sustaining that such an investigation cannot be properly brought before a jury or the Court by reports. That requires better evidence than that.

By Mr. Freeman: Do you want me to bring the 1851 man in?

By the Court: I am not telling you what to do, but I am excluding these documents.

By Mr. Freeman: I would like to submit some law on that subject, your Honor.

By the Court: I will hear you.

1852 By Mr. Freeman: Would you withhold a ruling until I have had an opportunity Monday to present you with law?

By the Court: Yes.

By Mr. Owens: For the record, the fact, your Honor, that the last answer of the witness disqualifies these documents as business records is because they are not the business of the Parmelee or Keeshin Company. They are the investigation of the business by somebody else.

By Mr. Freeman: You have already ruled.

By the Court: Proceed.

By Mr. Freeman:

Q. Mr. Krock, were you in the courtroom when Mr. Meserow was testifying?

A. I was.

Q. Do you remember the names of the three drivers that Mr. Meserow testified he represented?

A. I do.

Q. What were their names?

A. Joe Vitus, Walter Antiporek and—

Q. Morris Toppel?

A. Yes.

1853 By Mr. Keating: May the record show Mr. Freeman suggested the name to the witness.

By Mr. Freeman: Of course it shows.

By Mr. Keating: It wasn't quite as loud as your other statements, Mr. Freeman, and I thought they might have missed it.

By Mr. McConnell: The Judge is going to bite you in a minute if you don't keep quiet.

By the Court: Proceed, gentlemen, please.

By Mr. Freeman: Thank you, your Honor.

By Mr. McConnell: Not the Judge on the bench.

By Mr. Freeman:

Q. Mr. Krock, were those three individuals formerly employed by the Parmelee Transportation Company?

A. They were.

By Mr. Thompson: If the Court please,—

By Mr. Freeman:

Q. Approximately when?

By Mr. Thompson: Just a minute, please. Your Honor, I would like to have an opportunity to make ob-

1854 jections to these questions before he runs along. I object to the question previously asked and move to strike the answer, if there was one, as not being proper rebuttal of anything.

They certainly can't be bringing a witness on the stand to contradict or impeach the testimony of their own witness they put on the stand to prove this business of labor difficulties in 1955.

They put Mr. Meserow on the stand, and his testimony is their testimony, that they vouched for, and we challenge any attempt to qualify or explain it or impeach it.

1855 By the Court: I will let him answer.

By the Witness: What was the question?

(Whereupon the record was read as above recorded.)

By Mr. Freeman: I had no question pending.

By Mr. Freeman:

Q. When did they leave the employment of the Parmelee Transportation Company?

By Mr. Thompson: I object to that as immaterial and certainly not proper rebuttal or anything.

By the Court: He may answer.

By the Witness:

A. I don't know the exact date. It seems to me around September 15 of 1955.

By Mr. Freeman:

Q. Did these individuals, while they were working for Parmelee, seek to solicit employees for Keeshin's company?

By Mr. Thompson: We object to that as immaterial.

By the Court: Objection sustained.

By Mr. Thompson: It is not rebuttal of anything.

1856 By the Court: It would be hearsay if he did answer "Yes."

By Mr. Freeman:

Q. Do you know anything about the activities of these individuals?

A. I do.

By Mr. Thompson: We object to that as immaterial, and I move to strike the answer if there was one.

By the Court: Objection sustained.

By Mr. Freeman: Your Honor, I think it is clear that a great effort has been made by Mr. Thompson to demonstrate there were labor difficulties. We are trying to demonstrate to your Honor and to the jury who is responsible or who instigated these rumors of labor difficulties, and I think we have accomplished a great deal.

By the Court: The objection is sustained on the ground of hearsay. This man cannot testify to what somebody else said to somebody else.

By Mr. Freeman:

Q. Did you have any conversations with these individuals?

1857 By Mr. Thompson: If he did, we weren't there, and we are objecting to that as hearsay.

By the Court: Objection sustained.

By Mr. Freeman:

Q. Do you know whether or not these three individuals became supervisors of the Keeshin company, the Railroad Transfer?

By Mr. Thompson: I object to that as immaterial.

By the Court: He may answer if he knows of his own knowledge.

By the Witness:

A. I do.

By Mr. Thompson: It is not proper rebuttal, your Honor, we submit.

By the Court: I don't mean to be discourteous, but I am merely passing upon what I think may have some probative value. Proceed.

By the Witness:

A. I do.

By Mr. Freeman:

Q. Will you tell us what you know about their positions with the Keeshin company?

A. All three of them were—

1858 By Mr. Thompson: Just a minute. We object to the question that has been asked and submit that it is not rebuttal of anything, obviously not.

By Mr. Freeman: I assume you will make the same objection to this line of questions. I only have one or two more questions.

By the Court: He may answer if he knows of his own knowledge, not hearsay.

By the Witness:

A. I do. All three were made supervisors of the Keeshin organization.

By Mr. Thompson: And I move to strike the answer.

By the Court: Let it stand.

1859 By Mr. Freeman:

Q. Were they made supervisors commencing October 1, 1955?

By Mr. Thompson: Objection to that.

By the Court: Unless he knows of his own knowledge.

By the Witness:

A. I don't know whether it was October 1 of 1955 or very shortly thereafter.

By Mr. Freeman: Thank you, Mr. Krock.

By the Court: You may cross-examine. First, does anybody else want to ask him any questions? If not, go ahead.

Cross Examination by Mr. Thompson.

Q. What is your present employment?

A. General manager, Continental Air Transport Company.

Q. Still in the pay of Parmelee Transportation Company then?

A. That is correct.

Q. And you are being paid while you are here today, I suppose?

1860 A. Correct, sir.

Q. You have been paid while you were assisting plaintiff's counsel in the preparation of this case?

A. I beg your pardon?

By Mr. Freeman: Objection to that.

By the Court: Read the question.

(Record read as above recorded.)

By Mr. Freeman: It assumes he was helping in the preparation. That is not established by the record, and it is not true.

By the Court: He is cross-examining, and he has a right to.

By the Witness:

A. I was getting paid constantly. I don't know what you mean by assisting the counsel in the preparation of the case.

By Mr. Thompson:

Q. You have not done anything in the preparation of this case?

A. Nothing other than to testify here.

Q. Well, what about this spying you were doing on the Keeshin service?

By Mr. Freeman: Objection to that.

1861 By the Court: The word "spying" may be stricken and the word "investigating" substituted.

By Mr. Freeman: Thank you.

By the Witness:

A. Actually, the investigating I was doing I was doing for my own benefit more than anything else. I wanted to see just how well somebody else was doing. I was responsible for the operation for twelve years before we went out of business, and I just wanted to see whether anybody could do any better.

By Mr. Thompson:

Q. And Parmelee Transportation Company was paying you while you were satisfying your curiosity about this matter?

A. That is correct.

Q. What is the department that you were saying, where you had these people employed assisting you in this investigation?

A. They were supervisors.

Q. What was the department? You were the head of some department, you said?

A. Yes, I was general superintendent.

1862 Q. Of what?

A. Of the Parmelee Transportation.

Q. When?

A. Since July of 1943 up to July 31 of 1957.

Q. What about on October 1, 1955, were you the Superintendent of the Parmelee Transportation Company?

A. I was.

Q. Superintendent of what division or what service?

A. Well, whatever service was left I was superintendent of.

Q. You mean of this interstation transfer service?

A. That is right.

Q. Did Parmelee Transportation Company still conduct interstation transfer service after October 1, 1955?

1863 A. Yes; we had some vehicle operating. We had trucks operating picking up city delivery baggage.

Q. Did you have anything to do—did you render any of this interstation transfer service after October 1?

A. No, we lost the business.

Q. Well, you said you were superintendent of the department that was handling this interstation transfer service.

A. We were—myself and two supervisors were left on the payroll of the Parmelee Transportation and carried our same titles and positions.

Q. And your employment was to interfere with the Keeshin operation?

By Mr. Freeman: Objection to that. It is obviously improper "interfere with." There is no reason to prejudice the jury that way.

By the Court: Objection sustained as to "interfere with."

By Mr. Thompson:

Q. You had, after October 1, 1955, Parmelee Transportation vehicles stationed at the stations after the contract was turned over—after the contract was given to the Keeshin company?

1864 A. We did.

Q. And you occupied the space that was allocated by the several stations to the vehicles that were employed in this interstation transfer business?

A. I don't follow you.

Q. You occupied the space that was set aside by the various stations for the vehicles that were employed in transferring passengers, didn't you?

A. No, we did not.

Q. You didn't have any of your vehicles?

A. Yes, but we weren't occupying anybody's space.

Q. Whose space were you occupying?

A. At the North Western Station we were in the street. We were in no way interfering with anybody.

At the Union Station we didn't go into it at all.

The LaSalle Street Station, we were out on the public street.

The Illinois Central is public property, and the Dearborn Station likewise. We were on a public street.

Q. You didn't have any of your vehicles in the station loading area at the Illinois Central?

A. That is a public street of the Illinois Central.

Q. Would you mind answering the question?

1865 A. Yes, we did.

Q. And the area where the transfering vehicles had loaded and unloaded for many years was the area that you were occupying?

A. Part of it, yes.

Q. And you were also occupying an area at the Dearborn Street Station?

A. Yes, sir.

Q. And also at the LaSalle Street Station?

A. At the LaSalle Street Station we were out in the street. We were not in the station at all.

Q. You didn't go inside the space there where the loading and unloading had been going on for years?

A. Only for a short period of time when we were granted permission to do so by the courts.

Q. I say, you did occupy it on October the 1st and thereafter for some period of time?

A. Yes.

Q. And you occupied also space at the Union Station where there was loading and unloading of passengers?

A. No, we did not.

1866 Q. At no time after October 1st?

A. At no time.

Q. And what about the North Western?

A. The North Western Station, we were out on Clinton

Street, which was not a part of the loading area assigned to interstation transfer.

Q. How long did you have these Parmelee vehicles occupying the space generally employed for the loading and unloading of transferring passengers?

By Mr. Freeman: I object to that.

His testimony has just been to the contrary.

By the Court: Overruled; he may answer.

By the Witness:

A. It seems to me it was July 31 of 1957 when we took them off the street entirely.

By Mr. Thompson:

Q. So when you picked up a passenger at these stations to be transferred to another station, did you charge them cash fares?

A. That is right.

Q. In other words, you were running taxi service with the Parmelee vehicles?

A. I don't know what you would call it, but we were transferring people to downtown area stations on
1867 a cash fare basis.

Q. Not on a transfer coupon basis?

A. No, sir.

Q. And the same thing—what about the transferring of their checked baggage?

A. We didn't transfer any checked baggage.

Q. You didn't even try that?

A. No, sir.

Q. Their hand baggage they did carry along with them, of course?

A. That is correct.

1868 Q. Who received the complaints of the Parmelee service during the period of time that it was under agreement with the terminal lines for transferrinng these passengers?

A. What complaints are you speaking of now?

Q. The complaints, whatever they were.

A. Well, generally they would be mailed in to our office, and Mr. Scheeder was the man who would generally receive them.

Q. Of course, you didn't know anything about them I suppose.

A. Yes, I sure did.

Q. What was Mr. Scheeder's job?

A. He was vice president.

Q. What about his having to do with the service, the operation of this interstation transfer business?

A. Well, as I mentioned, he was vice president and actually my immediate superior, and if there were any complaints come in I would soon hear about them.

Q. And you did hear about them?

A. When they came in, yes.

Q. Did the complaint from the station agent at Duluth, Minnesota, respecting the six engineers from the 1869 Minnesota Power and Light—

By Mr. Freeman: I want to object to this.

By Mr. Thompson:

Q. (Continuing) —Light Company—

By Mr. Freeman: Thank you, Counsel. May I object to this line?

By the Court: Don't you think you ought to let him finish his question, the same as I let you?

By Mr. Freeman: He never did, but I think this entire—

By the Court: I don't know what this is, but I could only find out from his question.

By Mr. Freeman: But his question was an attempt to make a statement of fact rather than to ask a question, and it invaded improper ground.

If Mr. Thompson wants to go ahead and ask it, go ahead.

By the Court: Will counsel please rephrase his question?

By Mr. McConnell: May I tell the court that I
1870 have just received word that my hearing has been put over until Monday, so I won't need to interrupt this.

By the Court: Fine.

By Mr. Thompson:

Q. Was there brought to your attention a complaint transmitted by Mr. Schafer, the agent at Duluth, Minnesota, of six persons who were traveling down to Schenectady, New York, from Duluth, of failure of the Parmelee Transfer here in Chicago on their transfer from the North Western station to the LaSalle Street station, in May, 1955?

A. I don't remember.

By Mr. Freeman: I would also want to object on this further ground, your Honor, that you will recall that Mr. McConnell inquired of Mr. Padrick with respect to specific complaints made by railroads to Mr. Padrick about the Keeshin service, and you rejected that evidence. It was objected to and you rejected it.

By the Court: I don't recall that. Will you repeat
1871 that again, please? When Mr. McConnell?

By Mr. Freeman: The exhibit was Plaintiff's Exhibit 117. It was a letter from Mr. Towns to Mr. Padrick, who was testifying. It had to do with the Keeshin service and Mr. Towns' reaction to the Keeshin service.

It was addressed to Mr. Padrick, Mr. Padrick said he had received it, it was from his files, and we were unable to inquire into that subject on the ground, as Mr. Thompson objected, that this was hearsay.

Of course, this, too, is hearsay. The witness doesn't even know about it, but I think any inquiry into this subject would necessarily have to be controlled by the rulings that you have made.

By the Court: He may answer if he received it. If he didn't—

By Mr. Freeman: Mr. Padrick stated that he received the letter.

By the Court: Who is Padrick? I have forgotten.

1872 By Mr. Freeman: Mr. Padrick was a witness Mr. Thompson put on the stand, and Mr. McConnell had cross examined, and Mr. Padrick said he had received a letter, dated May 22, 1956, from Mr. Towne of the Erie Railroad, and we could not inquire into that.

By the Court: Is that true, Judge Thompson? I don't recall the incident.

By Mr. Thompson: No.

By Mr. Freeman: I make the statement in the record, and I make it on the basis—

By the Court: I don't mean a question of truth.

By Mr. McConnell: I may say it is exactly correct. I tried to cross examine Mr. Padrick on a letter which he said he had received from Mr. Towns of the Erie Railroad, and Judge Thompson objected on the ground that I couldn't go into that because it was a hearsay statement by Towns of the Erie company as to the complaints that were made to his railroad. We were stopped on that ground.

Your Honor can look at this, if you wish. It shows

1873 exactly what the situation is.

By Mr. Thompson: It is quite a different situation to what we are dealing with now.

By the Court: Will you please differentiate, Judge? I don't recall this.

By Mr. Thompson: The situation there, as I recall it, if I may take a glance—

By the Court: Here it is.

By Mr. McConnell: I want to let the Judge see it. You have read this over and over again in your spare time. The Judge hasn't had a chance to see it. I would like to have him see it. I assume he is the Judge that is going to rule on it, not you.

By the Court: May I ask you a question, Mr. Witness? When these documents that were offered in evidence and upon which I reserved my ruling, were they made since the filing of this suit?

By the Witness: Yes.

By the Court: The investigation you are talking about was conducted since the filing of this suit?

By the Witness: That is correct.

1874 By the Court: We are talking about this suit.

By the Witness: Let me change that. I don't know whether they were made since the filing of the suit or not. They were made since we lost the business. Let me correct that.

By the Court: When was the suit filed, do you know?

By the Witness: I don't know.

By the Court: When was it filed?

By Mr. Thompson: February 17, 1956.

By Mr. Freeman: Some of these investigations were made before that.

By the Court: Before?

By Mr. Freeman: Before that.

By the Court: Some were in 1957?

By Mr. Freeman: Some were made in 1957. I say some were made before February, 1956; the others were made after.

By the Court: All right.

By Mr. Thompson: Thank you, your Honor, for letting me look at it.

That document is a communication of one of the
1875 railroads, as I see it, to Mr. Padrick respecting a feature of the transfer service.

By the Court: May I read it, please?

By Mr. Freeman: I just object to this as not proper cross examination, your Honor, and it has nothing to do with it.

By Mr. Thompson: I will state what my objection is when your Honor gets through. I don't want to interrupt.

My objection, your Honor, to the document when it was presented was that it had to do with the pickup and delivery service, and had nothing to do with the interstation transfer matter, and was immaterial to the issues before the Court.

By the Court: The objection will be overruled. He may answer the question about the complaint that he received. He testified to good service of Parmelee, and now this is proper cross examination on complaints.

By Mr. Freeman: I don't remember this witness testi-
fying about the Parmelee service at all. At least, I
1876 didn't inquire. He may have, but I didn't inquire of anything except these two lines of investigation that he conducted.

I am going to put Mr. Scheeder on the stand, who will discuss the whole subject of the Parmelee service. If Mr. Thompson wants to interrogate him, he can. If he wants to go ahead—

By Mr. Thompson: That promise I accept.

By the Court: Objection overruled. You may proceed.

By Mr. Thompson: Just a second. I have some more instructions.

That is all.

1877 *Cross Examination by Mr. Meserow.*

Q. Mr. Krock, after October 1st, 1955, I believe you testified that Parmelee had its vehicles at the stations until July of 1957, is that correct?

A. That is right.

Q. Now, isn't it true that at the Dearborn station, your vehicles occupied the same area on the street after October 1st, 1955, that they occupied prior to October 1st, 1955?

A. I said that. I said at some of the stations we did. It was still a public street, though. It was not—

Q. And wasn't that space immediately adjacent to the door out of which the passengers came from the trains?

A. Yes.

Q. All right. Isn't it also true that you had Parmelee agents inside of the stations soliciting and hawking, as they say in the trade, passengers to take the Parmelee vehicles?

A. Not to my knowledge. We never had any—

Q. You were there, weren't you?

A. I never saw any inside. They were out on
1878 the sidewalk.

Q. But they were there?

A. Oh, yes.

Q. Now isn't it also true that at the IC station at Roosevelt Road and Michigan Avenue, the Parmelee vehicles after October 1st, 1955, occupied the same area outside that station as did the Keeshin vehicles?

A. I answered that before. I said yes, part of it.

Q. And you also had agents on duty at that station after October 1st?

A. That is correct.

Q. And didn't your agents obtain cash fares from these passengers?

A. Yes.

Q. How much was it?

A. Seventy-five cents.

Q. And didn't they also pick up transfer tickets from these passengers?

A. You mean the coupons?

Q. Coupons.

A. Yes, they did.

Q. Were they turned in to the company?

1879 A. Yes, they were.

Q. Your company, I mean.

A. Right.

Q. Do you know Mr. Markin?

A. Yes, I do.

Q. Has he ever given you any instructions in the course of your duties?

A. Any instructions?

Q. Yes.

A. I don't know quite what you are referring to.

Q. Well, has he ever directed you to do certain things in the course of your occupation?

A. No, sir, not that I know of.

Q. Well, who did?

A. Nobody did. I guess I know what I was supposed to do.

Q. You acted on your own?

A. I was put into a job, and I was supposed to do it to the best of my ability.

Q. Isn't it true that Mr. Markin asked you to make an investigation of what was going on at these various stations in 1956 and 1957?

A. He did not.

Q. Who did?

1880 A. Nobody did.

Q. Now you testified that you were at certain sta-

tions on your own, is that correct?

A. That is right.

Q. I believe one of the stations you mentioned was the Dearborn station?

A. I did.

Q. Do you know how many trains come into the Dearborn station in the morning?

A. Offhand I don't, but I know there is a good number of them.

Q. If I said six, would that refresh your memory?

A. I wouldn't be able to say.

Q. Isn't it true that they arrive about 7:15 in the morning?

A. Yes.

Q. How far do you live from the Dearborn station, your home?

A. How far do I live now?

Q. No, at that time in 1955, late, after October 1st?

A. Oh, I don't know, probably fifteen or sixteen miles.

Q. Now you got up, all on your own, early in the
1881 morning to get down to the Dearborn station to make an investigation at 7:15 in the morning, is that correct?

A. I used to start working regularly at 6:00 o'clock in the morning all the time that I was in my position of general superintendent. It was nothing out of the ordinary.

Q. Now you testified there were some people waiting after October 1st, 1955?

A. That is right.

Q. To get transferred, is that correct?

A. That is right.

Q. How did you know who they were, where they came from and where they were going?

A. How did I know?

Q. Yes.

A. They were waiting in your loading area.

Q. Weren't they waiting in the Parmelee area?

A. No sir, they were loading out of the west side of the station where the Keeshin cars were loading.

Q. You are sure they weren't waiting for Morris Markin's taxicabs?

A. They don't load cabs on that spot. The cabs 1882 are loaded in front.

By Mr. Freeman: May I make an observation—

By Mr. Keating: I object to an observation by counsel.

By Mr. Freeman: I want to object to the last question, and I move it be stricken.

By the Court: Objection sustained. It may be stricken. I will give the jurors a little time as long as we are going to continue a half hour. Five-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1883 By the Court: Proceed.

By Mr. Meserow:

Q. Mr. Krock, after October 1st, 1955, at North Western Station, isn't it true that the Parmelee vehicles were lined up on Canal Street on the west side of the street in a cab stand?

A. They were lined up on the west side of Canal Street, in the street, yes.

Q. In a cab stand?

A. I am not too clear whether it was a cab stand or not.

Q. It was a no parking area, wasn't it?

A. It was on the street.

Q. Along the sidewalk?

A. That is correct.

Q. And alongside the door which was an exit from the North Western Station, wasn't it?

A. That is right.

Q. Now immediately inside the door adjoining where your Parmelee vehicles were was the stand or booth of Railroad Transfer Service, wasn't it?

A. Yes, sir, I believe it was.

Q. And immediately to the right, about 10 or 15 1884 feet, were the escalator stairs up to the second floor?

A. That is right.

Q. And on the second floor was where the trains came in and the passengers came down the escalators?

A. That is right.

Q. Isn't it true that your agents and drivers came inside right at the same spot where the Railroad Transfer people were, and solicited passengers?

A. No, sir, they did not. They were standing out on the street and soliciting passengers out there. In the summertime, with the station doors open, you could hear them inside the station, but they were out on the sidewalk.

Q. In the wintertime, they came in to get warm, didn't they?

A. They may have, but they didn't do any soliciting.

Q. Now during the war years and shortly thereafter, Mr. Krock, isn't it true that when a contingent of large number of soldiers came into town and went from one station to another, that Parmelee, instead of taking them in their vehicles, had them marched over?

A. No, sir.

Q. Were they marched over?

A. Some of them may have marched over of their 1885 own volition. We never marched them over.

Q. You took the coupons for each of these service men, didn't you, the Parmelee representatives?

A. If they had checked baggage to go through, we did, yes. We felt we were entitled to it.

Q. Isn't it true on many occasions when sailors came in from the Great Lakes on the North Shore and came to the station at Adams Street and Wabash, and they were going to the Illinois Central Station at 12th Street, that your vehicles did not take them, but they were marched over to the I.C. Station?

A. No, sir. The sailors used to unload at the La Salle and Van Buren.

Q. I say that those that came in from Great Lakes on the North Shore.

A. Those that came in from Great Lakes on the North Shore is who I am talking about. They would unload at La Salle and Van Buren, walk down the stairway into the La Salle Street Station, and that is where we had our vehicles for them.

Q. They walked all the way over to the La Salle Street Station?

A. They got off the train at the La Salle Street Station.

1886 Q. On the North Shore?

A. That is right.

Q. And you took their tickets?

A. Yes, and we transferred them.

By Mr. Meserow: All right. That is all I have.

Redirect Examination by Mr. Freeman.

Q. Mr. Krock, did the Parmelee Transportation Company have any licenses from the City of Chicago authorizing the operation of their vehicles on the City streets?

A. Yes, we did.

Q. What was the nature of these licenses?

A. We had a terminal vehicle license.

By Mr. Thompson: We object to that as immaterial and improper redirect.

By the Court: He may answer.

By Mr. Meserow: What year? Let him fix the year.

By Mr. Thompson: I don't know what difference it makes.

By Mr. Freeman:

Q. Did you have the terminal vehicle licenses in 1955, 1956 and 1957?

1887 A. We did.

Q. And did these licenses authorize you to stand on the City streets where you did provide for your stands?

A. They did.

By Mr. Thompson: We object to the questions and the answers, not the best evidence, and move to strike the answers.

By Mr. Meserow: They also call for a legal conclusion which this witness is not competent to answer.

By the Court: I will let it stand.

By Mr. Freeman: I have nothing further of this witness. Thank you, your Honor.

(Witness excused.)

1888 By the Court: Call your next witness.

By Mr. McConnell: I will call Mr. Scheeder.

WILLIAM A. SCHEEDER, called as a witness by the Plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination By Mr. McConnell.

Q. Will you state your name, please?

A. William A. Scheeder.

Q. Where do you live, Mr. Scheeder?

A. 9945 South Oakley Avenue.

Q. What is your business or occupation?

A. I am vice president and director of Parmelee Transportation Company.

Q. How long have you been employed by that company?

A. Since October 1923.

Q. Will you tell us the various offices you have had in the company?

A. I was office manager, general baggage agent, general traffic manager, through a succession of positions became vice president and director.

Q. What experience did you have, if any, in the 1889 transportation field prior to the time that you came to the Parmelee Company?

A. Well, from 1909 to 1911, I was in the traffic department of Nelson Morris and Company, meat packers. From 1911 to 1923, I was in the baggage and mail department at LaSalle Street Station, the New York Central System and Rock Island Railroads.

Q. How long were you with the New York Central Railroad?

A. Twelve years.

Q. How long with the Rock Island?

A. Well, they are a joint operation. I was on both payrolls.

Q. What were your duties with the Parmelee Company?

A. I had to do with complaints, sales, services, special movements.

Q. In your dealings with the railroads when you were with the Parmelee Company, who did you deal with generally?

A. Generally with the passenger traffic department; also with others in the field at the stations, such as station managers and other departments.

Q. When you were with the Parmelee Company when they were doing the transfer business, which has
1890 been described here in this courtroom, did you belong to any railroad organizations?

A. Yes. I kept in close touch with the top echelon of the railroads as well as everybody involved in the traffic and passenger movements, and I became active in the Chicago Passenger Club, National Defense Transportation Association, American Association of Passenger Rate Men, Rotary Club, and so forth.

Q. Did you belong to an organization known as the National Defense Transportation Association?

A. I did.

Q. What was that organization?

A. Well, that was an organization formed mostly by transportation people during the war or shortly thereafter, which had the protection and security of the country uppermost in mind so that they could participate in any invasions of security and protection of the country in general in case of war.

Q. Was the Parmelee organization pledged to cooperate in any such defense?

A. Well, so-called pledge, as they have under the Civil Defense now, we were not, but during the war our president, Mr. Landman, wrote to Mayor Daley
1891 and offered the services to the city that may be required in connection with any disaster or difficulty that may arise during the difficulties.

By Mr. Thompson: I don't see what this rebuts, your Honor. This is improper rebuttal testimony.

By the Court: I don't see it either.

By Mr. McConnell: Well, they had a big to-do here about being a member of the Civil Defense.

By Mr. Thompson: Well, this doesn't rebut that.

By Mr. McConnell: And pointing out that they had

signs on their vehicles, and so forth. I am trying to show that we cooperated, too; that we weren't some renegade outfit that wasn't cooperating with civil defense.

By the Court: He is talking about the wartime and they are talking about since the contract.

By Mr. McConnell: Well, we haven't been there. The only time we can tell about is when we were there.

1892 By the Court: All right. Proceed.

By Mr. McConnell:

Q. Now, did you handle grievances and criticisms?

A. I did.

Q. If there were any, sent to the Parmelee people?

A. I did. They were infrequent.

Q. I was going to ask you that. Were they frequent or infrequent?

A. Infrequent, and comparatively few to the volume of traffic that we handled.

Q. How long did you have to do with handling criticisms and complaints?

A. Well, practically from the time I started with the company.

Q. Over all the time that you were there, how many complaints did you say you had had on your service?

A. Well, it is difficult to place the number, but rarely. I don't suppose they averaged one a week.

Q. How many passengers would you handle in the course of a week?

A. Well, that varied. During the war years it ran, it might run as high as 15,000 in a day, and in slower periods down to 2,000 or 2,500.

1893 Q. How about any criticisms as to the handling of baggage? Did you handle those?

A. I was in charge of the baggage department. Very rarely was there any criticism. The baggage was moved promptly.

Q. During your relationship with Parmelee, did you ever hear any railroad official criticize your service or your organization?

A. Well, the railroad people didn't criticize the method of our operation.

Q. Well, did you have any criticism from any railroad official as to the courtesy of your employees?

A. Well, we have had had some complimentary letters. We have had many complimentary reports on the prompt and expeditious manner in which we have handled people, and occasionally, although we tried to operate as nearly perfectly as possible, we occasionally would receive a complaint against an agent, but it was very, very rare.

Q. Now calling your attention to the five year period from 1951 to October 1st, 1955, what equipment did Parmelee use?

A. We had 85 limousine coaches, 51 straight job trucks, and four supervisors's cars.

1894 Q. What were the 85 limousine coaches? Describe them, if you can. Were they all the same?

A. Some were 7-passenger. 65 were 7-passenger type, and 20 were the 10-passenger type, especially constructed for this transfer service. They were easy to step into and out of. They had a large baggage compartment where the baggage would be kept separate from the passengers, and it would allow the passengers to enter the coach while we were loading the baggage, so the baggage was thoroughly protected from the elements, and in no way would the passengers, would there be any hardship on the passengers due to weather conditions.

Q. Was the baggage carried in the cab, I mean, in the vehicle, or up above?

A. No, in the rear, a specially built-in trunk compartment.

Q. Was it carried above?

A. No.

Q. None of this putting it on top?

A. No, sir.

Q. Now what were the baggage trucks? You said there were 51 baggage trucks. What were they? Describe those.

A. They were Dodge. They were one and a half
1895 ton, straight line — straight jobs. I think they call them — paneled trucks, enclosed, to keep the baggage protected from the elements with tailgates across the back to prevent any opportunity for loss.

Q. Those 85 limousines that you spoke about, you say they were manufactured to special specifications. Who manufactured them?

A. Checker Motor Corporation.

Q. That is the organization up in Kalamazoo that we have heard about?

A. Yes, sir.

Q. Who set up the specifications for those vehicles?

A. Well, that would be through Mr. Krock and our general manager, either Mr. Passolt or Mr. Rheintgen.

Q. Do you know whether those specifications were set up based upon the particular experience that the Parmelee company had in the handling of this job?

A. I believe they were based on the type of operation we were to perform.

Q. How often did you renew your equipment?

A. Well, it was the policy to renew it about every three or three and a half years.

Q. Was the policy followed?

A. Yes, sir.

Q. Now before this equipment was put into serv-
1896 ice, did you have any consultation with the railroad people as to whether or not it met their requirements?

A. Over the years when we were ready to make a changeover in equipment, it was the custom to confer with the top passenger officials as to the type of equipment we contemplated putting into operation.

1897 Q. At any time when the Parmelee people were doing this business, did the railroad officials, any railroad official ever request, as far as you know, that your vehicles be air conditioned?

A. They did not.

Q. Well, did anybody from the railroads ever request it?

A. They did not.

Q. Do you recall being present in the May 19 meeting with the committee of six?

A. Yes, sir.

Q. Who else was there from your company?

A. Mr. Markin, Mr. Rheintgen, Mr. Krock and myself.

Q. Was there any discussion there at that time about air conditioning?

A. Yes, there was.

Q. Can you tell us what was said by your people about it?

A. Well, Mr. Markin explained when questioned about air conditioning, of the proposed new equipment, that he didn't think it was feasible during the short trips between the stations with the frequent opening and closing of the doors, that it wouldn't be practical.

1898 Q. Did you express any opinion on it?

A. No, I did not.

Q. Was he the only one from your organization that expressed any opinion on it?

A. I think so.

Q. Was anyone on the committee expressing any opinion about it?

A. Yes, very much so.

Q. What did they say?

A. Mr. Whittington just kept repeating about air conditioning, but he didn't go into detail as to the benefits or the necessity for air conditioning, as I remember.

Q. Did anybody else there say anything about it?

A. No, I don't think any of the others said anything about air conditioning. Whittington seemed to have been the spokesman.

Q. What was the former kind of dispatch system that was utilized by Parmelee?

A. Well, we had an interconnection of long distance lines from our main office to all of the railroad terminals at the offices at the railroad stations where our passenger agents operated, and we also had an extension of
1899 those lines into the baggage end where the through baggage moved through so we could keep in constant touch with our baggage agents as well.

Q. Were those direct lines?

A. They were direct lines.

Q. Will you tell us what your experience was with that sort of dispatch equipment?

A. Well, we found it quite satisfactory. It enabled us to handle the operation very successfully.

Q. How long did it take to get a vehicle, one of your vehicles from your place of dispatch to the place you wanted it to go or the railroad stations?

A. Well, the vehicles were then at the various stations, and the dispatcher would get reports from the agents as to the time the trains were scheduled to arrive. When we had advance notice of the number of people arriving on trains, if there were special groups, as we frequently got advance notice, and the dispatcher could then arrange to have sufficient vehicles at whatever station this particular group was coming in, and they could concentrate

the vehicles on that station so they would be handled promptly to their outgoing station.

1900 Q. At any time your vehicle got to any station you could reach him on this intercommunication system?

A. It was relayed to our passenger agent who had full charge of these drivers, because he knew what the conditions were at that station, what his requirements would be, and if there would be any need for surplus vehicles at other stations that would immediately be transmitted to our dispatcher so that he knew that the service was protected at other terminals.

Q. How long would it take to get ahold of a vehicle to take it to another station by this dispatch system?

A. Well, right there where our agents were, a minimum of time. There is no lost motion for the agent to direct three or four, whatever may be required, those drivers to immediately depart to another station.

Q. Was there any discussion in the committee of this type of service?

A. I don't believe there was.

Q. Was there any criticism of it?

A. No.

Q. Did you ever have any criticism of it from the railroads at any time?

A. No. In fact, the railroads found it convenient

1901 at times to use the phone service rather than call outside lines in case they wanted to know about arrivals at other stations.

Q. Did you have any discussion with the committee about installing a dispatching system where you would have a two-way radio on your vehicles?

A. You mean at the May 19 meeting did we have a discussion?

Q. Yes.

A. That was brought up at the meeting.

Q. Did anybody from your organization say anything about that?

A. Mr. Markin again went into detail to explain to them about our board, as I recall it.

Q. What did he say about it?

A. He felt it was quite satisfactory and adequate to protect the service.

Q. Did anybody say that it wasn't?

A. I don't believe they did.

Q. What are these passenger agents that you talk about, what was their function and what did they do?

A. They are uniformed men that have designated sponsors at the various stations to meet the incoming trains and contact the passengers who were obliged to make the station transfers, and he would arrange 1902 to lift their transfer coupons and present them with tickets as authority to ride, and would direct them to where our coaches were located.

We had different locations at the various stations.

Q. How many transfer agents did you have at the time your service was taken over by Keeshin or his company?

A. I believe we had about 50 passenger agents and baggage agents as far as I remember.

Q. How many employees did you have at that time? At the end of your arrangements there with their railroads?

A. We had 120 drivers, and with the passenger agents and officer personnel and maintenance men, there were 80 to 83.

Q. So you had a little over 200 personnel all told?

A. That is right, and a supervisory staff, of course, is included in there.

Q. Going back to your dispatch system, was there any time that you can recall, as far as you know, when the railroads were critical of your dispatch system?

A. No.

Q. You never had any criticism of any kind?

1903 A. No, sir.

By Mr. McConnell: Is this a good time to stop?

By the Court: Yes.

Have a nice weekend and please don't discuss this case with anyone, and we will see you Monday morning at 10:00 o'clock.

(Thereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: 10:30 for the lawyers.

(Thereupon an adjournment was taken in the hearing of the above-entitled case to Monday, May 9, 1960, at the hour of 10:30 o'clock a.m.)

1904 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Monday, May 9, 1960,
10:30 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant.
Hugh W. Cross;

1905 Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad
Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1906 And thereupon the following further proceedings were had herein;—

By the Clerk: No. 56 C 323. Parmelee Transportation Company vs. John L. Keeshin, et al. The case on trial.

By the Court: Bring out the jury.

(And thereupon the following proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Proceed.

WILLIAM A. SCHEEDER, called as a witness herein on behalf of the Plaintiff, in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. McConnell.

Q. Mr. Scheeder, did you ever suggest, on behalf of the Parmelee company, the use of station wagons or buses in this service?

A. Yes. In 1944 we presented a model of the station wagon, which the railroads rejected.

Q. Who did you present it to, do you recall?

1907 By Mr. Thompson: If the Court please, we object to this as not rebuttal of anything. If they are going to open up the case again, we will have to meet it.

By the Court: I will let him answer, briefly.

By Mr. McConnell: I thought I heard testimony here. I don't want to do anything—

By the Court: I will let him answer.

By Mr. McConnell:

Q. Do you recall the last question, or do you want it read to you?

A. I would like it read.

(Whereupon the record was read as above recorded.)

By the Witness:

A. I don't recall all the individuals, the top passenger officers of the Chicago Terminal Lines.

By Mr. McConnell:

Q. Can you give us just sort of a background sketch of the history of this Parmelee company as you recall it in your time there, I mean how it came into being, and so forth?

By Mr. Thompson: We object to that as imma-

1908 terial.

By the Court: Objection sustained.

By Mr. Thompson: And not proper rebuttal.

By the Court: That has been brought out, and it isn't rebuttal.

1909 By Mr. McConnell: Well, I thought there was some talk here about that it wasn't in existence 102 years ago, and so forth.

By the Court: I have no objection if you think it is to meet something.

By Mr. McConnell: That is all I am trying to do. They are trying to show it only came into existence during Mr. Markin's lifetime.

By the Court: All right. Read the question.

(Record read as above recorded.)

By the Witness:

A. Parmelee was founded in 1953—

By Mr. Thompson: If the Court please, I doubt if the witness was there in 1853. Objection.

By the Court: The objection is sustained.

By Mr. McConnell:

Q. Well, how long were you there?

A. During my work with railroad work and Parmelee, I can recall the Parmelee Transfer Company being the authorized transfer company engaged in the trans-
1910 ferring of passengers and baggage. The original company was—

By Mr. Thompson: If the Court please, the question was, "How long were you there?"

By the Court: Yes.

By Mr. Thompson: And we move to strike the answer as immaterial and not proper rebuttal.

By the Court: It may be stricken. How long of your own knowledge?

By the Witness: Of my own knowledge in 1929 the present Parmelee Company was acquired by Mr. Markin.

By Mr. McConnell:

Q. My question is, how long have you been there? I am talking about you as an individual, not the Parmelee Company.

A. How long have I what?

Q. How long were you there with the Parmelee Company?

A. I have been with the Parmelee Company for thirty-six years.

Q. Was that prior to 1929?

A. That was prior to 1929.

Q. Tell us when you started. That is what I am
1911 trying to get at.

A. When I started, the Parmelee Company was the Parmelee Transfer Company, which was subsequently acquired by M Markin and his associates in 1929 through stock acquisitions and has continued.

1912 Q. Do you recall any celebration of any kind in 1953?

A. We celebrated our centennial on May 9, 1953 and had received wide recognition by the railroads.

By Mr. Thompson: We move to strike the answer as not rebuttal to anything.

By the Court: It may be stricken.

By Mr. Thompson: And bringing in a completely new subject.

By the Court: It may be stricken.

By Mr. McConnell:

Q. Will you tell us what buildings or facilities in the way of buildings that Parmelee had and which they utilized in the carrying on of this transfer business?

By Mr. Thompson: We object to that.

By the Court: I think that has been covered.

By Mr. Thompson: It doesn't rebut anything.

By the Court: It has been covered, I thought, originally.

By Mr. McConnell: I don't recall it being covered.

By the Court: The garages and facilities. I beg pardon?

1913 By Mr. McConnell: On their case they talked about where they serviced their vehicles, and so forth. All I want to bring out is what we had in the way of facilities.

By the Court: If the jury has it, it is there.

By Mr. McConnell: I don't recall it being brought out. I may be wrong, but I don't remember it.

By the Court: All right. Very briefly. What buildings have you?

By the Witness:

A. The Parmelee company maintained a large building at 300 North DesPlaines Street, which housed our equipment. We had a maintenance shop, general office and a large platform for the sorting and disbursing of baggage, which was a substantial cost.

In addition thereto we had adjacent vacant property. Our maintenance work was done in this building and it housed all the vehicles.

By Mr. McConnell:

Q. Was that building owned by the Parmelee company?

A. It was leased until 1954 when it was purchased by Parmelee Transportation Company.

1914 Q. Now getting back to that May 19th meeting with the railroad committee, sub-Committee of Six, do you recall any discussion at that meeting about the escalator clause, so-called, in the Parmelee proposal, that is, where your rate was going to increase with the decrease in the number of passengers and vice-versa? Do you recall any discussion on that subject?

A. Yes. At the beginning of the meeting Mr. Markin said that he would drop that portion of his proposal.

Q. So that was dropped out and not taken up any further, is that correct?

A. Yes.

Q. At that meeting, what did Mr. Markin propose as to the procurement of new equipment by Parmelee, if anything?

A. At the meetings that Mr. Markin attended?

Q. No, the May 19th meeting.

A. The May 19 meeting, he told the committee that he proposed to spend $500,000 for new equipment to be procured within six months or a year. In fact, at that time our equipment was about ready to be renewed anyway.

Q. Was there any talk at that meeting about the handling of group traffic on a reduced rate?

1915 A. There was a discussion.

Q. What was said about that subject?

A. The question arose as to the cost of handling groups, large groups or groups on reduced rates, and Mr. Markin said that he would handle that traffic at the rate of 50 cents per person.

Q. Can you tell us whether or not when Parmelee was handling the transfer business, whether there was any extra charge for extra baggage of a passenger?

A. Well, there was no extra charge for baggage. The transfer coupon took care of all baggage that a person was using on his journey.

Q. No matter how many pieces?

A. That is right.

1916 Q. Do you know what the Keeshin Company did with reference to that when they came in?

A. Yes. In 1955, they applied a charge, regardless of the transfer coupon, for the transfer of a trunk from one station to another at $1.20 or for the first piece, $1.20. Additional trunks were charged for at the rate of 75 cents, and additional handbags at 50 cents each, and no consideration given the value of the transfer coupon.

Q. This service which is known as a pickup and delivery service, tell us what that was, please.

By Mr. Thompson: We object to it as improper rebuttal.

By Mr. McConnell: You went into it on your case.

By the Court: He may answer.

By the Witness:

A. The pickup and delivery service of baggage between the hotels, residences and the railroad stations was provided for by Parmelee seven days a week, including Sundays and holidays.

Q. Was that something that you did pursuant to the request of the railroads?

A. That was at the request of the railroads, being the authorized transfer company.

1917 By Mr. Thompson: We object to the hearsay testimony unless the persons--

By the Court: Objection sustained to the form of the answer.

By Mr. Thompson: Move to strike the answer.

By the Court: It may be stricken.

By Mr. McConnell:

Q. Do you recall any conversation you had with anybody about that subject from the railroads?

A. Yes. I received—you are speaking of the?

Q. Pickup and delivery service. Calling your attention to any conversation which you had with anybody from the railroads on that subject matter. Can you tell us if you did have such a conversation, who it was with?

A. I am afraid I don't quite understand your question. You are speaking now of the local pickup and delivery from the city residence to the railroad station?

Q. Yes, I am talking about that.

A. I beg pardon?

Q. I am referring to your testimony that the railroads required it. Who told you that? Who of the rail-

1918 roads told you they required that service?

A. Well, that—

By Mr. Thompson: I object, your Honor. That answer has been stricken.

By the Court: Sustained. Where did he have the conversation, with whom, what time, and who was present?

By the Witness:

A. The conversations were either in writing, the conversations with baggage traffic managers either orally or in writing. They were greatly interested—

By Mr. Thompson: Just a moment.

By the Court: Sustained.

By Mr. Thompson: I object to any voluntary answer.

By Mr. McConnell: All right.

By Mr. McConnell:

Q. Tell us the conversation you had with any of these traffic managers.

By Mr. Thompson: We object unless it is identified as to time, place, and persons present.

By the Court: He may state the conversation if he will designate the time and the place and who was present.

1919 By Mr. McConnell:

Q. Well, as near as you can. If you can't remember the exact date, say so. Give us an approximate time.

A. This is something that had been going on over a period of years. The service was—

By Mr. Thompson: We object to any volunteered answer. There is no question pending.

By the Court: Sustained.

By Mr. McConnell:

Q. All right. What was the conversation that was going on over a period of years?

By Mr. Thompson: We object to that.

By the Court: Sustained.

By Mr. McConnell:

Q. And with whom? Who did you have your conversation with, if you know?

A. The baggage traffic managers of the various railroads.

Q. Would you say all of them?

A. All of them, of the Chicago Terminal Lines.

Q. All right. Can you fix a date any closer than just over the period of your service? Would you say it was in each year?

A. It occurred whenever there was a change re-
1920 quested in the pickup and delivery charge, and those charges were incorporated in—

Q. No, I am just trying to fix the time now. Not with reference to something else.

A. The last change we had was in 1954.

Q. All right. Now, tell us what conversations you had with the railroad traffic managers in 1954, and where it was, if you can remember.

A. We wrote to the—

By Mr. Thompson: Just a moment. I am objecting. By the Witness:

A. (Continuing) We wrote to the chairman—

By Mr. Thompson: Mr. Scheeder, please. We object to it.

By the Court: If he wrote, let's have the correspondence.

By Mr. McConnell: I am not talking about a writing.

By Mr. Thompson: We object to the mass conversation with a lot of unidentified people. If they had it at a meeting where they were all present, that is one thing.

By the Court: Objection sustained.

1921 By Mr. McConnell:

Q. Did you have any conversations with the terminal managers on or about the middle of April 1954, on that subject?

A. The conversation that I recall in 1954 was a meet-

ing with Mr. Padrick about our pickup and delivery service.

1922 Q. Now, tell us what the conversation was.

A. That conversation was that the baggage and pickup and delivery service was to stand on its own. We were to obtain a rate that would compensate us for the service performed, and subsequently in order to establish this rate we wrote to the chairman of the passenger, the Railroad Passenger Associations, which consist of a Mr. Padrick of the Transcontinental Western Passenger Association, Mr. Winkler of the Trunk Lines Central Committee, Mr. Duggan of the Southeastern Passenger Association, and the chairman of the New England Passenger Association, proposing our baggage pickup—

By Mr. Thompson: We object to any recital of correspondence. If they have any, let's have it produced.

By the Court: Objection sustained.

By Mr. McConnell:

Q. Have you exhausted your recollection of that conversation with Padrick?

A. There was further conversation with Mr. Padrick.

Q. All right. You tell us what further was said.

A. The question of an additional charge for remains.

Q. No; I am just talking about the pickup and

1923 delivery service now. That is the subject I am directing your attention to.

A. I think that has been thoroughly covered.

Q. All right. Have you exhausted your recollection on it now?

A. Yes.

Q. Was there anything said in that conversation about the railroads wanting you to do that pickup and delivery service?

A. The pickup and delivery service was—

By Mr. Thompson: Just a minute.

By Mr. McConnell:

Q. Just listen to th question.

By Mr. Thompson: It can be answered "Yes" or "No."

By the Witness:

A. Yes.

By Mr. McConnell:

Q. All right; tell us what was said about it.

A. The pickup and delivery service was to stand on its own as far as the charges were concerned.

Q. Well, was there anything further said about the railroads wanting you to perform this service for the traveling public?

1924 A. Well, the practice, usage. There was nothing definitely said that it shouldn't remain. The question all hinged on the fact of charges.

Q. All right.

Do you know whether that pickup and delivery service was continued by the Parmelee, or rather, by the Keeshin company after they took over the service?

A. Yes.

Q. Was it the same service?

By Mr. Thompson: We object to that as calling for a conclusion.

By the Court: Objection sustained.

By Mr. McConnell:

Q. Well, you told us that you picked up and delivered seven days a week. Do you know how many days a week the Keeshin company picked up and delivered baggage?

A. They cut out the Sundays and holidays with the exception of the central business district.

Q. Did you have a service when the Parmelee company was rendering this transfer service whereby the passenger going to a downtown hotel or downtown or

Loop destination could travel in your equipment for the coupon?

A. Yes.

1925 By Mr. Thompson: We object to that as immaterial and not proper rebuttal and move to strike the answer.

By Mr. McConnell: You went into that question.

By Mr. Thompson: We did not. You went into it.

By the Court: The objection is sustained. It has been covered.

By Mr. McConnell:

Q. Do you know whether or not the Keeshin service permitted the passenger to travel on the coupon to the Loop area?

By Mr. Thompson: That is immaterial.

By the Court: Same objection, same ruling, sustained. It has been covered.

By Mr. McConnell:

Q. Do you know about a service rendered by the Parmelee Company at the Englewood Station at the time you had this business?

A. Yes.

By Mr. Thompson: We object to that as improper rebuttal.

By the Court: That has been covered. Sus-
1926 tained.

By Mr. McConnell: That has never been covered.

By the Court: If you say it hasn't, I will let him answer.

By Mr. McConnell: I have never covered it.

By Mr. Meserow: Yes, it has.

By Mr. Thompson: It was discussed by your testimony. We never touched it.

By Mr. McConnell: That is all right. You are showing what your service was.

By the Court: I have heard it before, but if you say it isn't, I will let him answer it.

By Mr. McConnell:

Q. Do you know the question now? Do you have it in your mind?

A. Yes.

Q. All right.

A. We arranged for passengers to transfer between railroads at the four stations located in the Englewood district on 63rd Street. They would transfer on their coupon, and we would reimburse the taxi company 1927 for the service that they performed.

Q. Was that so all during the time the Parmelee Company, or while you were there, at least, with the Parmelee Company?

A. That service was in effect during my course of employment, and when Keeshin—and Keeshin dropped that service.

By Mr. Meserow: Your Honor, he has been asked questions, and he has testified about what Keeshin is doing. There is no foundation that he knows anything about Keeshin's business.

By the Court: The objection is sustained to the last part. It may be stricken.

By Mr. McConnell: So that your Honor will have what the purpose of that testimony was, you will recall that I asked Mr. Padrick on cross examination about this Englewood Station service, which fixed it in your Honor's mind.

By the Court: He covered it, the other witness, but there is no foundation for his knowledge.

By Mr. McConnell: I am not talking about 1928 Keeshin. That is all right for that to go out.

By the Court: I only struck the last part.

By Mr. McConnell: That is all right, but I am saying that this evidence of what happened at the Englewood Station, as offered, is impeaching evidence of the testimony of Mr. Padrick that we had no such service.

1929 By the Court: I only struck the last part of the sentence, what Keeshin is doing. There was no foundation laid for it.

By Mr. McConnell:

Q. Do you know what the rates were that were charged by the Parmelee company for pickup and delivery service?

By Mr. Thompson: We object to that as immaterial and not rebuttal.

By the Court: It has been covered several times.

By Mr. McConnell: There is no evidence here of what our rate was.

By Mr. Freeman: None whatever.

By the Court: I thought there was.

By Mr. Thompson: There isn't any evidence, your Honor, as to what the rate was. I agree with that, but we submit it doesn't rebut anything.

By Mr. McConnell: It does rebut it, because we rendered a service which you do not render.

By Mr. Thompson: They are trying to rebut their own cross examination of some of these witnesses. Mr. Padrick's testimony on the Englewood Station was

1930 cross examination. He didn't testify—

By the Court: What do you mean by standing on its own, independent of the contract?

By the Witness: What is your question, Judge?

By the Court: When you said before in your conversation with the passenger agent that the pickup service would stand on its own, what did you mean by that?

By the Witness: That was in connection with the rate increase that we had applied for in 1954.

By the Court: Was that covered by the contract?

By the Witness: No written contract.

By the Court: The objection is sustained.

By Mr. McConnell: We never had a contract, your Honor. That is all established by the evidence here. We were doing this on an at-will basis.

By Mr. Thompson: Which is a contract as long as it is in operation.

By the Court: Objection sustained.

1931 By Mr. McConnell: You may cross examine.

Cross Examination by Mr. Thompson.

Q. Mr. Scheeder, this pickup and delivery service was a matter of private contract between the Parmelee company and the customer, wasn't it?

By Mr. McConnell: That calls for a conclusion, a legal conclusion on the facts.

By the Court: He may answer.

By the Witness:

A. That is a service in which t' railroads were—

By Mr. Thompson:

Q. Just answer my question, please, if you can.

By Mr. McConnell: Let him finish his answer, and if you don't like it, you can strike it. I object to interfering with the witness' answer.

By the Court: Objection sustained to that, Mr. McConnell. Proceed.

By Mr. Thompson: Read the question.

(Whereupon the record was read as above recorded.)

By Mr. McConnell: He started to give his answer, and Judge Thompson interrupted him.

1932 By the Court: It calls or a "Yes" or "No" answer.

By the Witness:

A. The customer would call us direct or he would have his arrangements made by a travel agent or a railroad agent to call at his house and pick up his baggage to be taken to a railroad station.

By Mr. Thompson:

Q. And the customer paid you?

A. The customer paid us.

1933 Q. And you fixed the charge?

A. Yes.

Q. You say that you had few complaints, probably not over one a week during the time Parmelee was rendering this service of interstation transfer, I mean. How would these complaints come to you?

A. Generally by telephone.

Q. The station agent would call you and tell you that there were a lot of people waiting for service, and ask you to get some cabs over there?

By Mr. McConnell: I object to that. If he is going to prove that, we are entitled to know when it was and what the conversation was.

By the Court: He is cross-examining. He has a right to ask.

By Mr. McConnell: He can't answer that question without assuming something which is not in evidence.

By the Court: The witness may say so.

By the Witness: Will you read the question?

(Record read as above recorded.)

By the Witness:

1934 A. Not necessarily for a lot of people. There might be an irregularity.

By Mr. Thompson:

Q. Well, were there ever telephone calls that there were an inadequate number of vehicles to move the passengers?

A. There may have been instances when they would say there were no vehicles available, but the records indicate the vehicles were on the way and an immediate check was made to ascertain if any and what fault existed.

Q. What records indicated the vehicles were on the way?

A. The dispatcher's records.

Q. The dispatcher's records. When you called up, he sent some vehicles on the way, is that right?

A. That is right.

Q. In other words, he had undertaken to get some there?

A. He had already arranged before that call came in, or he may have arranged afterwards, but he always knew what was coming in so that he could provide the service necessary.

Q. Anyway, they were by oral communication?

1935 A. Generally.

Q. And the communications would come to you, would they?

A. In most instances.

Q. When they came to you, then what did you do, call the dispatcher?

A. I immediately contacted the dispatcher or our superintendent and ascertained if there was any fault.

Q. And then after you did that, then they started calling around trying to get some cabs, is that it?

A. Well, I think that was—that already had been taken care of.

By Mr. McConnell: I object to this highly speculative line. They are both speculating back and forth of what might have happened at some unknown time.

By the Court: Overruled. It must be dealt with by speculation when you are covering a period of a long time.

By Mr. Thompson:

Q. If it was telephoned to you that there were no cabs at the station and people were waiting, just tell us what happened from then on.

A. It was our method of communication to get
1936 vehicles over to the designated spot as soon as possible.

Q. How did you do it? I say what happened after you got the complaint from the passenger representative?

A. The dispatcher arranged to—

1937 Q. You called the dispatcher, is that the next thing?

A. Yes.

Q. All right. Then you told your dispatcher there were no cabs at the LaSalle Street Station?

A. I asked him how the situation looked of cabs going to LaSalle Street Station because they stated there was additional vehicles required or there was a shortage, and the records indicated then—

Q. No, we are not interested in records. What did the dispatcher do then? Did he tell you—

By Mr. McConnell: I object to what the dispatcher did unless he knows what he did.

By Mr. Thompson:

Q. He is talking to the dispatcher. Did the dispatcher tell you there were cabs on the way?

A. They assured me there was.

Q. Did you do anything further to find out whether that was so?

A. I have checked back to make sure that everything was taken care of.

Q. You checked back the station then and said, "Have you got any cabs there yet?"?

A. No, sir, I checked up with the dispatcher.

1938 Q. Oh, with the dispatcher.

Did you ever check with the station agent?

A. There may have been instances. There is no necessity of going any further. The dispatcher had the record.

Q. You didn't check back with the agent to see if people were still standing there waiting for service?

A. I would in some instances.

Q. Now in addition to getting these complaints by telephone, did you get them in any other fashion?

A. Occasionally a letter may come through after a passenger passed through Chicago and they have had some difficulty, which was very infrequent.

Q. Did a railroad representative just hand you these letters without any record of transmission part of the time?

A. No, those letters would generally come through the mail. They would transmit them or they would write us, quoting a passenger's statement, enabling us to make an investigation to develop what, if anything, had transpired to cause the complaint.

Q. Now did this communication system you had—I will strike that.

By this communication system you had, you

1939 couldn't communicate with the driver after he had left a location and was on his way to another one?

A. There was no necessity of communicating with the driver.

Q. Well, if a driver left the North Western Station over here on Madison and Canal, taking two passengers across town to the Illinois Central Station at 12th and Michigan, and a telephone call came in that there were two people at the Grand Central Station wanting to go to the Illinois Central, you couldn't communicate with the driver to stop by and pick up those two people?

A. Oh, no. He wouldn't stop en route to pick up others. He would go direct with his load.

Q. But if you had the two-way radio system, you could have done that?

A. It could have been done, but there would be no necessity for it.

Q. If you had a call from the Illinois Central that some more cabs were needed there, and you cleared through your dispatcher, as you say, then who called the cabs for the service at the Illinois Central, the dispatcher?

A. It may not be necessary to call. His record might indicate there was sufficient vehicles on the way.

1940 Q. Yes, but how did you find out whether they ever got there?

A. Well, because they would have passengers. They would have to leave there again because the agent at the Illinois Central would report to the dispatcher when certain vehicles left there again so he—

Q. What if the cabs were not there when he called you? How did the communication get to the other stations to get cabs there?

A. Well, I don't know of any instance where a cab or a vehicle got lost between stations. If they were on their way over there, they would get there generally with passengers, or even if they were empty, they would get there. The records would indicate it and the agents at the receiving station knew there were cars coming there, and he would report back to the dispatcher what cars had left so if one got lost somewhere en route, the dispatcher certainly would know about it.

1941 Q. It wasn't a question of getting lost. It was a question of whether they were ever sent and how did you find out whether they were ever sent?

A. Because the dispatcher got a record from the sending station.

Q. And then if the sending station's record was not accurate, why, the dispatcher never found out about it, just let the people stand over at the Illinois Central?

A. Well, the dispatcher would find out about it.

Q. Well, that was the system you had, anyway?

A. That is right.

Q. Telephoning back and forth from one place to the other?

A. That is right.

Q. Now you have the radio two-way communication on your taxicabs, don't you, the Parmelee taxicabs, the Yellows and the Checkers?

By Mr. McConnell: There is no showing that this man ever worked for any of those companies. I never asked him a thing about what the cab companies did.

By the Court: Read the question, please.

1942 (The question was read as above recorded.)

By the Court: He may answer.

By Mr. McConnell: Parmelee isn't operating any taxicabs, your Honor, and this man never has had anything to do with taxicabs so far as I know.

By Mr. Thompson: Well, Parmelee owns—

By the Court: Forty-five percent.

By Mr. Thompson: A hundred percent.

By Mr. McConnell: Forty-five percent.

By Mr. Thompson: Some of them.

By the Court: He may answer.

By the Witness:

A. I don't have anything to do with the operation of taxicabs.

By Mr. Thompson:

Q. You don't know whether they have got radios in them or not?

A. I see radio aerials on the cabs.

Q. Do you ever ride in one of the cabs?

A. I do.

Q. You hear the radio conversations, don't you?

A. No, the radio is shut off whenever I ride in a cab.

1943 Q. You never heard any communications being made over the radio while you were in a cab?

A. Not that I can remember.

By the Court: Mr. McConnell said that they operated under no contract with the railroads up to 1955, is that right?

By the Witness: That is right.

By the Court: Was there any bid submitted by Parmelee, or in the bid submitted, did that cover pickups?

By the Witness: The pickup of baggage was independent from the transfer coupon.

By the Court: It wasn't contained in the bid?

By the Witness: No, that was separate from the transfer coupon bid.

By the Court: All right.

By Mr. Thompson:

Q. When you say they operated without a contract, you mean over the years, prior to 1955, you mean they had no written formal contract?

A. There was no written contract with any other railroads except the Nickel Plate.

Q. And that was confirmation of what the arrange-

1944 ment was with all the rest of them, wasn't it?

By Mr. McConnell: I object to that.

That is a conclusion.

By the Court: Sustained.

By Mr. Thompson:

Q. Anyway, the service was arranged by oral agreements between the terminal lines representatives and the railroads?

A. That is right—

Q. I mean and the Parmelee people.

A. That is right.

Q. There was never any time when there was private arrangement made between a railroad and the Parmelee people except this one instance you have mentioned?

A. No.

Q. Always the Parmelee folks when they wanted a change in the transfer charge or other arrangements, they appeared before a meeting of the representatives of the terminal lines to present their cause, don't they?

A. Yes.

Q. And so in each and every instance, 1948, 1952, 1954, the arrangement that were made were made by representatives of all the railroads acting in a group and the 1945 Parmelee representatives dealing with them directly?

By Mr. McConnell: Now wait a minute. I object to that. There isn't any evidence of that in this record, and this witness wasn't examined on it on direct.

By the Court: I think the jury has heard that before and it has been gone over.

By Mr. Thompson: Well, I think—

By Mr. McConnell: I didn't go into it on direct. I said nothing at all about that.

By the Court: I will sustain the objection.

By Mr. Thompson: It is easier to answer the question than to argue objections.

By Mr. McConnell: I know. Foxy old guy.

By the Court: I will sustain the objection.

By Mr. McConnell: Put a whole mouthful of—all right. Go ahead.

By the Court: I didn't hear that.

By Mr. McConnell: I was talking to the Judge on
1946 the side. I will take it back. I won't say any more. Not you, your Honor; this judge.

By the Court: Yes, I understand.

By Mr. Thompson: Are you through?

By Mr. McConnell: I am all through, Judge. Go right ahead.

1947 By Mr. Thompson:

Q. Now getting back to the lawsuit, can you answer the question that I just asked?

By Mr. McConnell: His Honor sustained the objection to it, I thought.

By the Court: I sustained the objection because it is not proper cross examination.

By Mr. Thompson: All right.

By the Court: Wait a minute.

Does it go to the existence of a contract?

By Mr. Thompson: Yes, he asked—

By Mr. McConnell: No, it doesn't go to that at all.

By Mr. Thompson: He asked how it was made and all about it. He asked about the contract; I didn't.

By the Court: What the Judge is trying to establish is the existence of an oral contract from time to time. You say there was no contract. I will let him prove it.

Proceed.

By Mr. Thompson: Yes. Now I will ask the question—

1948 By Mr. McConnell: I object to this man testifying about anything unless he was present.

By the Court: That is right.

I will sustain the objection unless he was present.

By Mr. Thompson: Well, we will fix that up pretty quick.

By Mr. Thompson:

Q. Did you attend these meetings of the representatives of the Terminal Lines as one of the spokesmen for Parmelee?

A. I attended the meetings.

Q. And while Landman was president and alive, he attended with you?

A. Yes.

Q. Is that right?

A. Yes.

Q. You were vice-president during all this period we are talking about from 1940 on?

A. Yes.

Q. And when Mr. Passolt took over as president, he attended with you?

A. Yes.

1949 Q. And in the later years, after Passolt's death, when Mr. Markin took over—

A. Yes.

Q. And Mr. Markin and you and Mr. Rheintgen and Mr. Krock all attended these passenger representative meetings?

A. Which meetings?

Q. The meetings of the so-called Chicago Terminal Lines, the representatives from the passenger departments.

A. Well how far back are you going?

Q. I am talking about when you were arranging these contracts in 1948, I mean these charges in 1948 and 1952 and 1954.

A. Well, in 1948 Mr. Rheintgen I don't think attended.

Q. No, but I am saying you attended and these other men in succession.

A. I attended.

Q. You were there at all times, whichever one of the others attended?

A. I think I attended all the meetings.

Q. Yes. Now, then, the Parmelee people then presented their case to the representatives of the Terminal Lines in asking for a fixing of the transfer fare?

1950 By Mr. McConnell: I object to that overall summary of the thing. If it has any importance at all, which I dispute, it has to do with the negotiations for coupon rate, when finally they got a coupon rate which is in evidence, and we have got his own witness who testified how it was done and said it was an arrangement at will.

By the Court: He may answer.

By the Witness: May I have the question?

By Mr. Thompson:

Q. Parmelee presented their case to the representatives of the Terminal Lines, didn't they?

A. Yes.

Q. And then the railroads either agreed or disagreed after discussion and negotiation?

A. Yes.

Q. And the arrangement then, whatever it was, was among the railroads all acting together on the one hand and the Parmelee company on the other hand?

1951 By Mr. McConnell: Wait a minute. I object to that conclusion that the railroads all acting together on the one hand. The evidence is just to the contrary.

By the Court: Overruled. He may answer.

By the Witness:

A. Yes.

By Mr. Thompson:

Q. All right. Now this agreement that was finally

reached was evidenced by minutes of proceedings that were published by the terminal line group through Mr. Padrick, was it not?

A. Yes, proceedings were published.

Q. And the proceedings which had to do with the arrangements for the intersection transfer service were mimeographed or multiplied by some process, and Parmelee always received a copy of it?

A. Yes. There may have been instances when it was covered by letter.

Q. Yes. In other words, there was a confirmation of—

By Mr. McConnell: I object to this speculation about this. Either something happened or it didn't.

1952 By the Court: It is your witness.

By Mr. McConnll: I know. I didn't examine him on this subject.

By the Court: He may answer. The answer may stand.

By Mr. Thompson:

Q. Anyway, that was after the agreement was reached it was confirmed in some fashion, wasn't it?

A. Yes.

Q. So you knew your deal was?

A. Yes.

Q. All right. Now getting back to this matter of complaints—

I will ask that his be marked Defendants' Exhibit 43 for identification.

(Thereupon the said document was marked Defendants' Exhibit 43 for identification.)

By Mr. Thompson:

Q. Showing you Defendants' Exhibit 43 for identification, did you receive that communication?

A. It is addressed to me. I assume I did. I can't remember it.

Q. You don't remember any incident like that re-
1953 cited in that communication?

A. Back in 1951, I don't recall the incident.

Q. But you did receive the communication?

A. Being addressed to me, I presume I did.

By the Court: We will take a short recess.

(Thereupon a short recess was had, after which the following further proceedings were had herein:)

1954 By the Court: Bring out the jury.

(And thereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By Mr. Thompson: Mark these as Defendants' Exhibits 44 to 62, inclusive, for identification.

(Thereupon said documents were marked, respectively, as Defendants' Exhibits Nos. 44 through 62, both inclusive, for identification.)

By the Court: Proceed.

By Mr. Thompson:

Q. I direct your attention to the document marked Defendants' Exhibit No. 45 and inquire whether you received that complaint.

By Mr. McConnell: I object to his characterization of the document. It isn't in evidence.

By the Court: The characterization may be stricken, just "this document."

By Mr. Thompson: That is right; I am sorry.

By the Witness:

1955 A. I assume we received it, and it a copy of my answer. I don't remember it at this late date.

By Mr. Thompson:

Q. There is no doubt about your receiving it, is there?

A. I don't believe so.

By Mr. McConnell: The witness says he doesn't remember.

By the Court: Proceed.

By Mr. Thompson:

Q. Does this document refresh your recollection as to whether you did receive it or not, this letter of February 9, 1949?

A. It is my letter, a copy of my letter.

Q. So you did receive it?

A. Yes.

Q. Exhibit 45?

A. Yes.

Q. I show you a document marked Defendants' Exhibit No. 47, for identification, which is a handwritten document, and ask you if you received that.

A. I received Mr. Kimbel's letter of March 12, 1951. I didn't receive this penciled memorandum, and I see my answer here of March 15, 1951.

1956 Q. The copy of the penciled memorandum was quoted in Mr. Kimbel's letter, wasn't it?

A. Yes.

By Mr. Thompson: The witness has referred to Mr. Kimbel's letter, and I ask to have it marked as Defendants' Exhibit No. 47-A, for identification.

(Thereupon the said document was marked Defendants' Exhibit 47-A for identification.)

By Mr. Thompson:

Q. Referring to Defendants' Exhibit 48, did you receive that document in the regular course of the mail?

A. This copy doesn't show from what railroad. It was apparently from Mr. Bone of my answer to him of December 28, 1951.

Q. The question is, did you receive the complaint or the document?

A. I assume I did in accordance with my reply.

Q. Defendants' Exhibit No. 49, did you receive that document?

A. Yes.

Q. And Defendants' Exhibit No. 50, did you re-
1957 ceive that document either through the mail or by having it handed to you by the railroad?

A. Yes.

Q. And Defendants' Exhibit 51, did you receive a copy of that memorandum?

A. I don't remember.

Q. And Defendants' Exhibit 52, did you receive that document?

A. Yes.

Q. And Defendants' Exhibit 53?

A. It being addressed to me, I assume I received it. I don't remember.

Q. You have no doubt about it, do you?

A. I don't think there should be any doubt.

Q. And Defendants' Exhibit No. 54, did you receive that document?

A. Yes, it indicates I did.

Q. And Defendants' Exhibit 55?

A. Yes.

Q. Defendants' Exhibit 56?

A. There is nothing here to indicate that I received it, and I don't remember it.

Q. You don't have any recollection of it?

A. No.

1958 Q. And Defendants' Exhibit 57?

A. I remember this letter from Mr. Butford to me of July 1, 1954.

Q. Was there enclosed with it this letter from Sheer to Butford of August 5, 1954?

A. I don't remember. It doesn't indicate so here. I don't think I have seen that.

Q. And Defendants' Exhibit 58, did you receive that document?

A. No.

Q. And Defendants' Exhibit 59?

A. Yes.

Q. Defendants' Exhibit 61?

A. No, I didn't receive this.

1959 Q. Defendants' Exhibit 44?

A. No, I didn't get that.

Q. Defendants' Exhibit 62?

A. I did not see that.

By Mr. Thompson: We offer in evidence Defendants' Exhibits 43, 45, 47 and 47-A—

By Mr. McConnell: Do you want me to object to these all at one time or what?

By Mr. Thompson: I don't care.

By the Court: I would suggest, Judge, if I may, to save time, that you submit them all to counsel.

By Mr. McConnell: If he will leave them with me over the noon hour maybe some of them I won't object to.

By the Court: Yes. I want to recess at 12:30.

By Mr. Freeman: I had suggested that to Mr. Thompson, your Honor, at the time of the recess.

By the Court: I have a luncheon meeting with Judge Hastings at 12:45, and so we will recess until 2:15. I have got to meet him at the Drake. In the meantime, you

1960 can look at those and go on with your cross examination.

I am sorry. Do you want to go on with examination on these documents?

By Mr. Freeman: Let's see what he wants to offer.

By Mr. Thompson: I am offering only those that he has acknowledged.

I offer Defendants' Exhibits 48, 49, 50, 52, 53, 54, 55, 57, and 59.

I think the rest of them were not identified.

When do you want to adjourn, your Honor?

By the Court: If you can go on without them, go ahead. We will recess at 12:30 and come back at 2:15. If you cannot go on, we will recess now.

By Mr. Thompson: No, I can go on.

By Mr. Thompson:

Q. This two-a-day transfer of baggage was instituted in 1954, wasn't it?

A. Yes.

Q. That transfer occurred at what hours of the day, approximately?

1961 A. Well, approximately between 8:00 and 5:00.

Q. But there was a morning delivery, was there, and an afternoon delivery, transfer, I mean, is that right?

A. That is about the way it would work out, depending on the arrival of the trains at the various stations.

Q. There were only two transfers a day, whatever time the trains arrived?

A. Plus what was augmented to those two depending upon the volume of traffic.

Q. And that, of course, was a special charge?

A. No, sir.

Q. $7.50 an hour for any extra time?

A. No, sir, not for that class of traffic.

1962 Q. Transfer took place about ten o'clock in the morning, before or after, depending on the station, and again about four o'clock in the afternoon, didn't it?

A. Generally.

Q. So that a passenger arriving with baggage for interstation transfer that arrived after four o'clock in the

afternoon, the baggage wouldn't be transferred until the next morning, the morning delivery?

A. That is right.

Q. Now on this matter of pickup and delivery, just for one other question, that service is open to anybody that wants to render it, isn't it?

A. No, because it was made through a deal with the railroads that we would perform that service.

Q. You mean to say, nobody else picks up and delivers baggage for customers?

A. Not on the system that the authorized transfer company had, which was Parmelee.

Q. What kind of authority did it have?

A. We had baggage checks supplied to us by the Chicago Terminal Lines, which enabled us to check a passenger's baggage through from his residence to final
1963 destination in connection with his railroad ticket.

Q. Yes.

A. Other transfer companies could arrange to pick up baggage and take it to the station only, and the passenger would have to arrange to do his own rechecking.

Q. Well, the transfer company could check it through, too, couldn't it?

A. No, sir.

Q. Does Parmelee still render that transfer service?

A. No, sir.

Q. The pickup and delivery service?

A. No, sir.

Q. How long since they discontinued doing that?

A. They discontinued that on September 30, 1955.

Q. You didn't perform any pickup and delivery service in that area after that date?

A. We did.

Q. That is what I asked you. I say you did perform it after that date?

A. We did.

Q. All right. Then why do you say you discontinued it September 30, 1955?

A. We didn't use the railroad checks after September 30, 1955.

1964 Q. But you did render the pickup and delivery service?

A. The local pickup and delivery between residences in the City of Chicago and suburbs.

Q. And you brought it down to the stations and checked it through to the destinations?

A. We brought it to the station and the passenger would arrange to check it through to the destination.

Q. You gave him a check for the baggage when you took it from home which was exchanged down at the station, is that right?

A. Right.

Q. Is that it?

A. Right.

Q. Now then, this transfer service out at Englewood that you talked about or at least this 63rd Street transfer service, how many railroads have 63rd Street stations?

A. At the Woodlawn Station, 63rd and Dorchester, the Illinois Central, Michigan Central and the Big Four—at the Englewood Station at 63rd and LaSalle, the New York Central, Rock Island and Nickel Plate.

Q. And the Pennsylvania?

A. And the Pennsylvania.

1965 Q. All right.

A. At 63rd and Wallace, Western Indiana Station, Erie, C&EI, Monon, Wabash.

The 63rd and Central Park, Grand Trunk Station.

Q. And the B&O Station is still on west?

A. 63rd and Leavitt, the B&O and Pere Marquette.

Q. Now, then, was this transfer service you talk about where you could transfer on a coupon, did it cover all of those stations?

A. Yes, sir.

Q. And what it amounted to is that the transfer company took the coupon from the passenger's ticket and gave it to the taxi driver, is that it?

A. The station agent or the taxi driver would receive the coupon from the passenger and honor that for his ride between any of the stations in the Englewood district.

Q. Without any payment to the taxi fellow?

A. If the fare ran more than the value of the coupon, the passenger paid the additional sum.

Q. So all it did was get the credit for the ticket?

A. The value of the coupon.

Q. Which the railroad had furnished to the customer?

1966 A. Right.

Q. Of course, that again was Yellow cabs and Checker cabs that were getting the business?

By Mr. McConnell: I object to that whether they were or weren't. There are other cab companies.

By the Court: Objection sustained.

By Mr. Thompson: All right.

By Mr. Thompson:

Q. Will you describe for us this seven passenger limousine you keep talking about?

A. The vehicle was a specially constructed vehicle for this transfer service with six passengers in the rear and one passenger seated with the driver in the front seat and a specially built baggage department separate from the passengers.

Q. Six passengers behind the driver's seat?

A. That was the maximum—five passengers, I should say. There are two jump seats.

Q. Two jump seats?

A. Five passenger and one in front—six, and the driver was considered as the seventh passenger. It was called a seven passenger vehicle.

Q. You call it a limousine, don't you?

1967 A. A limousine.

Q. That is three people sat on the back seat?

A. Right.

Q. And then there were two jump seats?

A. Right.

Q. And two or three people sat there—sometimes you put three in there, didn't you?

A. You could.

Q. Spreading across the space between the two jump seats with one sitting in the middle?

A. Right.

Q. And then you had a front seat, and could you put two with the driver sometimes?

A. Not very well.

1968 Q. In order to make it a seven-passenger vehicle, you had to have three in the jump seats?

A. Right.

Q. That is exactly the same sort of arrangement that is in the regular Yellow cabs, isn't it?

By Mr. McConnell: I don't know what this witness knows about Yellow cabs.

By Mr. Thompson: Let the witness answer.

By Mr. McConnell: I didn't qualify him as an expert on Yellow cabs. I don't think he knows anything about it.

By Mr. Thompson: I think everybody in Chicago that ever lived here knows.

By the Court: He may answer.

By Mr. Thompson:

Q. What is the answer?

A. I believe the cabs have two jump seats.

Q. You have been in Yellow cabs, haven't you?

A. I have ridden in them.

Q. And you know they have two jump seats, don't you?

A. I believe there are two jump seats.

Q. You know they are exactly like the so-called
1969 limousines you were talking about, as far as the interior of the body is concerned?

A. Approximately the same.

Q. And the baggage compartment is the same as the baggage compartments in Yellow cabs if they didn't lock the baggage compartment so you couldn't use it, isn't that true, of the cab?

A. I don't remember seeing a baggage compartment of a cab. I never saw one.

Q. There is a trunk back there, is there?

A. I don't know.

By Mr. McConnell: I object to his testifying about this subject.

By Mr. Thompson: I am cross-examining, if you don't recognize it.

By Mr. McConnell: I recognize it is cross examination, but that doesn't mean you are testifying here as an expert on Yellow cabs.

By the Court: He may answer. It is not as an expert. It is what they have.

By the Witness:

A. I don't know if there is a trunk compartment there or not.

1970 By Mr. Thompson:

Q. You have seen the rear end of a Yellow cab, haven't you?

A. Yes, I have seen the rear end.

Q. It doesn't flatten off like the wall here?

A. It is a design.

Q. There is a typical trunk style back there, isn't there?

A. Well, it is the rear end style.

Q. You couldn't tell the difference between one of these seven-passenger limousines you are talking about and a Yellow cab that was sitting side by side on a street, except it had the name painted on it and the color, a different color and a different name?

A. They were closely related.

Q. Not only closely related, they were made by the same mold, weren't they?

A. I don't know.

A. Yes.

Q. That is this Checker Motors Corporation up at Kalamazoo, Michigan who made the Yellow cabs?

1971 By Mr. McConnell: I object to that. There is no evidence that they make all the Yellow cabs, and they don't.

By the Court: Yes, sustained.

By Mr. Thompson: Thank you for your testimony. You seem to be an expert on the subject.

By Mr. Thompson:

Q. Anyway, asking you, Mr. Scheeder, do the Yellow cabs come from the Checker Motors Corporation?

By Mr. McConnell: I thought your Honor sustained an objection to that question.

By the Court: If he knows he may answer. It is a different question.

1972 By the Witness:

A. They are made by Checker Motors Manufacturing, many of them at least, because they also display the emblem. I don't know if they make all of them or not.

By Mr. McConnell:

Q. And all of the Parmelee cabs were made by Checker Motors Corporation, were they not?

A. Our fleet of 1952 was built by Checker Motors Corporation.

Q. And those were the ones still in operation in 1955?

A. Yes, sir.

Q. You said something about the baggage compartment being separate so as to not expose the passengers to the weather. When you got the baggage compartment full, this little trunk back there, what did you do with the rest of it?

By Mr. McConnell: I object to his stating "this little trunk back there," as his testimony, and then the witness has to assume that is true.

By the Court: That may be stricken from the question.

By Mr. Thompson:

1973 Q. When you got the trunk full, where did you put the rest of the baggage?

A. Well, when the trunk was full there was no more room for baggage.

Q. Where did you put it?

A. There was no place to put it. There was no need for any space.

Q. If the passengers had more baggage than would go into the trunk, what did you do with it?

A. We didn't have more passengers than we could accommodate their baggage.

Q. In other words, when you got the trunk full of baggage, then you accommodated only the passengers whose baggage had gone in the trunk?

A. If one passenger had a trunk full of baggage, we would handle that one passenger on his vehicle.

Q. So then that made it a one-passenger limousine?

A. What kind of a limousine?

By Mr. McConnell: I object to that argument with the witness.

By the Court: Yes.

By Mr. McConnell: It didn't change the cab any. It is pretty obvious.

By Mr. Thompson: All right.

1974 By Mr. Thompson:

Q. The truth of the matter is, you piled it in the front seat beside the driver, didn't you?

A. A piece or two might go in with the driver if there was no passenger there.

Q. Or you let the passengers carry it in their laps?

A. No, there wouldn't be room for that.

By the Court: All right; this is a nice time for you folks to have lunch. Come back at 2:15. Have a nice lunch.

(Thereupon a recess was taken in the hearing of the above-entitled cause to 2:15 o'clock p.m. of the same day, Monday, May 9, 1960.)

1975 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Monday, May 9, 1960,
2:15 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

1976 Present: (Continued)
Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

1977 By the Clerk: Case on trial.

By the Court: Let me talk to counsel a minute before the jury comes out. I am sorry I was late, but I was with Judge Hastings, as I told you.

We have the Judicial Conference Wednesday and Thursday, all day each day. I don't want to rush this case, but I would like to finish it by tomorrow, if we can. If we can't, we will go on Friday with it. If you want to work a little later tomorrow evening I can work with you later, if necessary, or tonight. I leave it entirely up to you.

By Mr. Thompson: We are trying to finish today, if we can.

By the Court: I don't want to rush anybody.

By Mr. Thompson: I think it is high time we were doing a little rushing.

By Mr. McConnell: You have been taking all the time. You have taken —

By the Court: I don't think so. I don't think we have wasted any time here. We have done the best we could under the circumstances.

I am merely leaving the cards face up so you will
1978 know what is going on from our Judicial Conference point of view. That I couldn't help. So let's try, if

we can to wind up by tomorrow, and if necessary, argue a little later.

By Mr. Thompson: How much more have you got, Mr. McConnell?

By the Court: Let's see what is going to happen.

By Mr. McConnell: I haven't anything more except this witness.

By Mr. Thompson: We will get through today maybe.

By the Court: How long will it take on the instructions? Do each of you have yours?

By Mr. Thompson: It won't take long.

By the Court: When you get through, we will go into chambers and discuss the instructions.

By Mr. Thompson: As soon as we get through.

By the Court: Let's talk about arguments. How long will each side take?

By Mr. McConnell: Well, your Honor said we weren't going to have any limitations, and I don't argue too long, but I wouldn't want to get under a wire here to get through.

By the Court: Certainly I don't want to limit it if I can help it. What is the approximation?

By Mr. McConnell: Let's hear from Judge Thompson.

By Mr. Thompson: Oh, I haven't any idea that 1979 it will take over an hour.

By the Court: Each side?

By Mr. Thompson: I can't speak for them; only my side. I don't see how the issues —

By the Court: Suppose we limit it to two hours each side.

By Mr. Thompson: Oh, I don't see any point in a limitation of two hours on each side. That means we are going to take two hours, and if we haven't got sense enough to limit our arguments without wearing the jury

out, we ought to quit practicing law.

1980 By the Court: Do you want less?

By Mr. McConnell: I don't want to be limited to less. I think it will take me two hours, all of two hours.

By Mr. Thompson: Opening and closing?

By Mr. McConnell: I think it will take me two hours to open this case.

By the Court: Two hours each side then.

Are you going to apportion your time among the defendants?

By Mr. Meserow: Your Honor, in the interest of saving time, we are going to let Judge Thompson be the sole one to argue for all the defendants.

By the Court: All right. Two hours.

By Mr. Keating: There may be some modification of that. I may want to make an argument.

By the Court: All right.

Bring out the jury.

(Whereupon the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Proceed.

1981 WILLIAM A. SCHEEDER, called as a witness herein on behalf of the Plaintiff, in rebuttal, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Resumed)

By Mr. Thompson: I will ask that these documents be marked Defendants' Exhibits 63 and 47-B for identification, respectively.

(Whereupon said documents were marked, respectively, as Defendants Exhibits Nos. 63 and 47-B for identification.)

By Mr. McConnell: I have some objections here to the offer made this forenoon.

Defendants' Exhibit 47, which was offered together with the document, Defendants' Exhibit 47-A, on that, this penciled memorandum, which was Exhibit 47-A, Judge Thompson said:

"I show you a document marked Defendants' Exhibit 47 for identification, which is a handwritten document, and ask you if you received that."

The witness said:

1982 "I received Mr. Kimbel's letter of March 12. I didn't receive this penciled memorandum."

So there is no foundation for that at all. He doesn't know anything about it.

Now on these others, they are all letters which are, at least, hearsay; sometimes it is double hearsay; sometimes it is triple hearsay, about somebody heard somebody say something, and it was repeated to him, and then he repeats it to somebody else, and then he bundles it up and writes a letter to Mr. Scheeder.

We object to them all as hearsay.

By the Court: What about the first one, Judge Thompson?

By Mr. Thompson: Well, the first one, I inquired whether he received Exhibit 47, which is the penciled one, and he said, "I received the letter from Mr. Kimbel," and the letter from Mr. Kimbel, which I then had marked Exhibit 47-A, is a typewritten copy of Exhibit 47. He did receive it, and I will ask him one more question, if I may, about another.

By Mr. Thompson:

Q. I show you Defendants' Exhibit 47-B, Mr.
1983 Scheeder, and ask if that is the letter you wrote in reply to the content of Exhibit 47 and Exhibit 47-A.

By Mr. McConnell: Now that isn't a fair question of that witness because the content of Exhibit 47 is contained in 47-A. He has testified to that. He compared it there on the witness stand.

By the Court: He may answer.

By the Witness:

A. This is my letter to Mr. Kimbel.

By Mr. Thompson:

Q. In response to his letter?

A. His letter.

Q. Of March 12, 1951?

A. Right.

By the Court: They all may be received in evidence.

(Said documents, so offered and received in evidence, were marked, respectively, as Defendants' Exhibits Nos. 43, 45, 47, 47-A, 48, 49, 50, 52, 53, 54, 55, 57 and 59.)

1984 By Mr. Thompson: By the way, your Honor, No. 43 which I offered in evidence appears to be a carbon copy of No. 47-A, so we withdraw No. 43.

By the Court: All right.

By Mr. Thompson:

Q. Mr. Scheeder, you were describing this seven-passenger limousine. I show you a photograph marked Defendants' Exhibit No. 63, and ask you if that is a photograph of the vehicle used by Parmelee in 1952, 1953, 1954, and 1955?

A. This is a picture of one of our vehicles, yes.

Q. And that is what you were calling the seven-passenger limousine?

A. Yes, sir.

Q. You said you had sixty-five of these?

By Mr. McConnell: May I see it?

By Mr. Thompson: I am sorry; yes.

By Mr. Thompson:

Q. How much did each of them cost.

A. I don't recall the exact figures.

Q. Without being exact, $2,500 apiece?

A. I don't recall the figures.

Q. Two thousand?

1985 A. I am at a loss. I am sorry, but I don't know the costs of them. I don't remember the costs of them. I may have heard it, but I can't quote. I really don't know.

Q. You were vice president, weren't you?

A. Yes.

Q. Did you pass on the purchase price of these vehicles?

A. I don't believe I did.

Q. Who did pass on the purchase price?

A. That would come under our general manager.

Q. Who is that? You are speaking of what year, now?

A. Well—

Q. 1952, you said you bought these?

A. Well, 1952 Mr. Passolt.

Q. He was also a vice president?

A. Yes, sir.

Q. He was a different kind of vice president than you are?

A. Yes, sir.

Q. What was he vice president in charge of?

A. Vice president and treasurer.

Q. And you were vice president and secretary?

1986 A. Vice president in traffic.

Q. You were vice president and secretary?

A. Yes, sir.

Q. And he was vice president and treasurer?

A. Yes, sir.

Q. Mr. Markin, or at least his company up there in Michigan fixed the selling price, didn't they?

A. I don't know.

Q. You said you had twenty ten-passenger limousines, I think you called them. How did you seat your passengers in that vehicle?

A. They seated three across, three rows of seats.

Q. That is nine?

A. And one with the driver.

Q. The driver is ten?

A. That is right.

Q. Where did you put the baggage?

A. The baggage went in the rear in a specially constructed trunk which was recessed, and the gas tank was even smaller to make more baggage space.

1987 Q. If you got more baggage with a load of passengers than you could get in the baggage space, what did you do with it?

A. The baggage space was ample to take care of the hand baggage.

Q. There never was a time when the eleven passenger would have too much baggage?

A. I don't recall.

Q. In fact, you didn't see any of that at all, did you?

A. I didn't.

Q. You were never over at the station seeing them unloading this baggage, were you?

A. I was around at times.

Q. How many times?

A. Well, there were occasions when I would spend part of two or three days of time around the stations.

Q. How many years apart were these occasions?

A. Well, continuously.

Q. Were you around there on October 1st when the change-over took place from Parmelee to Railroad Transfer?

A. I was at the La Salle Street Station that morning.

Q. You were at the La Salle Street Station?

1988 A. Yes.

Q. And who assigned you there?

A. Beg pardon?

Q. Who assigned you to be at the La Salle Street Station?

A. Well, that was an arrangement that was made the day before. We had, I think it was through Mr. Rheintgen that day I was designated to cover that station.

Q. Mr. Rheintgen?

A. Yes, sir.

Q. He was another vice-president, wasn't he?

A. After Mr. Passolt.

Q. So you had a lot of vice-presidents here in Chicago. How many did you have?

A. Two vice-presidents. Mr. Passolt died, and Mr. Rheintgen succeeded him.

Q. Just two at a time?

A. That is right.

Q. Where was Rheintgen assigned that morning of October 1, 1955?

A. I believe he was at the Central Station.

Q. Do you know?

A. I don't recall.

1989 Q. Mr. Freeman, attorney for Parmelee Transportation Company, did the assigning, didn't he?

A. He had part of it.

Q. He was on the job at the stations that morning, wasn't he?

A. I don't recall which station he was at.

Q. He was at a station? He took an assignment, didn't he?

A. I don't believe he did.

Q. In fact, he was riding herd on all of them at the different stations, wasn't he?

By Mr. McConnell: I object to that characterization.

By the Court: Yes, the description may be stricken.

By Mr. Thompson:

Q. He was supervising the conduct that was going on at these different stations, wasn't he?

A. He didn't come to the La Salle Street Station.

Q. Did you see him at any station?

A. I was stationed at La Salle Street.

Q. Did he call on you there?

A. He did not.

Q. What instructions did he give you?

1990 A. To observe what was going on.

Q. Is that all?

A. That is all I can remember.

1991 Q. Did you have any Parmelee cabs there?

A. Out in the street.

Q. On what Street?

A. LaSalle Street.

Q. That is at the east side of the station?

A. Yes, sir.

Q. That is where the entrance is, where vehicles enter and depart from the loading section back in behind, isn't it?

A. Yes, sir.

Q. How many Parmelee vehicles did you have parked there on LaSalle Street at the entrance?

A. About four or five.

Q. Did you have any persons inside of the station inviting customers to come out and patronize the cabs?

A. There were agents inside, but they didn't interfere with the transfer of traffic.

Q. You were there?

A. I was there.

Q. What did you do?

A. I observed.

Q. Observed what?

A. The conditions.

1992 Q. What conditions?

A. The transfer conditions.

Q. How many other people did you have there from the Parmelee group?

A. I believe there were two of our agents in there at the time.

Q. Well, Mr. Freeman was over at the Dearborn Street station, wasn't he, with Mr. Rheintgen?

A. I don't know.

Q. When the early trains were coming in from 7:00 to 8:00 o'clock?

A. I don't know where Mr. Freeman was.

Q. There were a half dozen trains coming in at the Dearborn station between 7:00 and 8:00, weren't there?

By Mr. McConnell: I object to this as improper cross examination. If he wants to make him his own witness, he may answer.

By the Witness:

A. I don't know how many trains were arriving in the morning.

By Mr. Thompson:

Q. Let's get to something else. You say Parmelee Transportation Company, the plaintiff here, bought this Des Plaines Street building in 1954?

1993 A. Yes, sir.

Q. Who sold it?

A. The Yellow Cab Company.

Q. That is what I thought.

By Mr. McConnell: I move to strike out what you think as having no bearing on this lawsuit.

By the Court: It may be stricken.

By Mr. Thompson:

Q. By the way, Mr. Scheeder, there was never a time in the history of Parmelee Transportation Company that it had $500,000 invested in vehicles for this interstation transfer service, was there?

By Mr. McConnell: I object to that. It doesn't make any difference.

By the Court: I will sustain the objection.

By Mr. Thompson:

Q. You say that—

By Mr. Freeman: Did he answer?

By Mr. Thompson: He sustained the objection.

By Mr. Thompson:

Q. Do you say this escalator clause which had
1994 to do with the increasing of the price of the coupon for each decrease, each one-percent decrease in the volume of passengers transferred was in the contract, was in the Parmelee proposal when it was presented on March 15, 1955, and didn't you say it was removed on March 17 at your conference?

1995 A. At the May 19 meeting Mr. Markin at the outset of the meeting stated he was willing to eliminate that escalator clause.

Q. That was the May 19 meeting?

A. Yes.

By Mr. McConnell: That is what he said.

By Mr. Thompson: March 17 is what you had him say.

By Mr. McConnell: No, I didn't. I said May 19, and the transcript will bear me out.

By the Court: Let's not argue. The jury heard it.

By Mr. Thompson: If the jury has as much trouble in remembering these things, we will be in real difficulty.

By Mr. McConnell: You speak for yourself. I remember what I asked him. I asked him May 19.

By Mr. Thompson: All right.

By the Court: Put the next question.

By Mr. Thompson:

Q. You took a little recess at the May 19 meeting to go out and decide to remove it after the railroads demanded that it be removed?

1996 A. Yes.

By Mr. Thompson: We offer in evidence the photograph, Defendants' Exhibit No. 63.

By Mr. McConnell: I have no objection to the photograph.

By the Court: It may be received.

(Said photograph, so offered and received in evidence, was marked Defendants' Exhibit No. 63.)

By Mr. Thompson:

Q. Now Mr. Scheeder, when did the responsibility of the interstation transfer company for the transferring of passengers commence, at train arrival time, I mean?

A. About 5:30 a.m. daily.

Q. Well, I am sure my question was not clear to you. A train arrives, let us say, at 7:30. The vehicles of the transfer company are out in front.

As to the length of time the passenger has to wait for the vehicle, when would you start calculating that time, from the time the train arrived or from some later time?

A. The rule was to have sufficient limousines on hand before the arrival of the train so there would be no delay as the passengers came out.

1997 Q. Well, that is the point I am trying to make. The first time Parmelee Transportation Company had any responsibility for receiving a passenger was when the passenger arrived at the loading zone with his baggage and ready to get in the vehicle?

A. The question isn't clear to me. I am sorry.

Q. Parmelee had no responsibility of going back to the train and getting the passenger and his baggage, did they?

A. But we had agents located in the station.

Q. After the passengers—

A. At the train gate.

Q. Yes, but your passenger agent or whatever you called him didn't go back and get the passenger or carry the passenger's baggage, either one?

A. No.

Q. Your responsibility started when the passenger was out in the loading zone, and only if you didn't have any cab there, would you be responsible for any delay.

A. Yes.

Q. That is, if the cab was there and the passenger got out there and got in the cab, there would be no delay at all, of course, except just the time it took him to 1998 get in the cab, that is right, isn't it?

A. Yes.

Q. The fact that the train had been in twenty minutes wouldn't make any difference. Parmelee wasn't responsible for that. The same thing is true with Railroad Transfer Service, isn't it? It is the responsibility—

By Mr. McConnell: I object to this as argumentative. It is just an argument.

By Mr. Thompson:

Q. Its responsibility takes place when the passenger is in the loading zone ready to get in the cab, isn't it?

By the Court: Is that proper rebuttal, Judge? On what theory?

By Mr. Thompson: It is rebutting this testimony of Krock, as to all this half hour delay.

By the Court: He may answer.

By Mr. McConnell: This is supposed to be cross exam-

ination within the scope of the direct. I didn't ask him a thing about Krock or about the delays.

By Mr. Thompson: You were asking him about 1999 how fast Parmelee got them away.

By the Court: He may answer.

By Mr. Thompson: I am trying to get a time, a test time here, in that period.

By the Court: He may answer.

By Mr. Thompson:

Q. The responsibility of the transfer service didn't begin until the passenger was there with his baggage ready to get in?

By Mr. McConnell: Your Honor, that is a legal question, what the responsibility of the cab company is. This witness is no lawyer. I don't think the judge could answer that question. I don't think he knows when the responsibility starts or ends.

By Mr. Thompson: You wouldn't want to try me, would you?

By Mr. McConnell: No, I wouldn't.

By the Court: When did the duties begin?

By Mr. Thompson:

Q. When did the duty start?

A. Our duty started from the time that the agent first contacted the passenger upon his arrival in
2000 the station, and he would take care of any baggage that he may be carrying that he wanted transferred over to the parcel room, and he may answer any questions he has in connection with his arrival in Chicago, and he would direct him to where the Parmelee limousines were loading.

Q. Yes. That was part of his duties, but not part of the duties as to moving the passenger from one station to the other. That started when the passenger arrived at the loading zone with his baggage, didn't it?

A. Yes, it did.

By Mr. McConnell: I object to that. That is just an argument with the Judge here. He states what it all is, and then asks a question back of it.

By the Court: He may answer.

By Mr. Thompson: I think that is all.

2001 *Redirect Examination.*

By Mr. McConnell: Where is that big picture of yours?

By Mr. Thompson: This one? I have a lot of other pictures here.

By Mr. McConnell: You must have taken this one on a dark night sometime.

By Mr. McConnell:

Q. I show you this Defendants' Exhibit 63. Where was the baggage carried in that taxi cab, as Judge Thompson calls it?

A. This is a very poor angle shot of that limousine.

Q. Let me ask you that question.

Does it give you a fair reproduction of the proportions of the vehicle?

A. No.

Q. All right. Go on from there now.

Where is the baggage?

A. The baggage goes in the rear. This lid lifts up. There is a recessed compartment. This baggage compartment is recessed. It is built lower purposely to accommodate more baggage with a smaller gas tank and no obstructions in the interior.

Q. All right.

2002 Now were these, whatever you want to call them, he calls them taxi cabs, taxi cab, limousine, vehicle, or carrier, whatever it is, were they made from specifications furnished by the Parmelee company to this factory up in Kalamazoo?

A. I don't know whether we sent in specifications or not, other than the baggage compartment. We were greatly interested in that.

Q. What did you ask be built in your cabs for baggage?

A. Specifying the average number of pieces of baggage that we would carry on a full load of passengers.

Q. How many bags could you get in a carrier or vehicle like that?

A. Oh, on an average you could carry twelve ordinary run of hand baggage.

Q. Was it a larger trunk than an ordinary trunk in a passenger car?

A. Yes.

Q. You say it was specially built. How was it specially built?

A. Well, the baggage compartment itself was specially built because it was recessed and gave more room, and the vehicle itself or limousine itself with its jump seats would accommodate six people in the rear and 2003 one with the driver.

Q. All right. Now wait a minute before we get through with the trunk.

Was there some change in the gasoline tank to accommodate more luggage?

A. Yes, sir, I said that.

Q. Well, did you find it satisfactory?

A. It was.

Q. To carry the baggage of the ordinary passenger load?

A. It was.

Q. Did you ever have any complaints from the railroads that you didn't have enough baggage space in your vehicles?

A. I don't remember of any such complaints.

Q. Now getting to the jump seats in the vehicles, were they the little round jump seat in the Yellow cab or were they something different from that?

A. No, they were a square seat, padded, and they were broader than the round seats.

Q. How much space, when they were both down in front, how much space would there be between, if you put in a third passenger?

A. They abutted each other.

Q. So there wasn't any space?

2004 A. No space.

Q. They both came down and made a solid surface?

A. So it would be a continuous seat.

Q. So you could put three people in that, is that right?

A. Yes, three people could be seated very comfortably.

Q. And if you wanted to carry a seventh passenger, where did he sit?

A. A seventh passenger?

Q. Yes, a seventh passenger.

A. He would sit with the driver.

Q. Now you didn't carry luggage up to top of the carrier, did you?

A. No, sir.

Q. Did Keeshin carry luggage up there, exposed to the elements?

A. I have seen baggage carried on the tops of his cars.

Q. You stated here in answer to cross examination that you had some negotiations with all the railroads on a contract or agreement. Did you ever see a contract between Parmelee and these 21 railroads?

A. None.

Q. They never had one, did they?

2005 A. No, sir, with the exception of the Nickel Plate.

Q. That was one contract with the Nickel Plate?

A. Yes, sir.

Q. When was that?

A. That contract was made in 1941, and was amended or changed as there was a rate change.

Q. All right. Now did you understand that these railroads could stop this service so ar as Parmelee is concerned any time they wanted to?

A. Yes.

Q. And they did, didn't they?

A. Yes.

Q. And Mr. Keeshin's outfit came in and took over, isn't that right?

A. Yes.

Q. You had no contract that would prevent that, did you?

A. No.

Q. Do you recall a statement being made at any of those meetings with the group of railroads—first let me ask you this: At those meetings with the group of railroads, what were you negotiating about?

A. Our transfer coupon rate.

Q. How much you were going to get for each

2006 coupon, is that right?

A. Yes.

Q. Do you recall a statement being made at any of those meetings that if any railroad wanted a contract with you, they should do so individually?

A. There was a meeting to that effect some years ago, and it was decided in the event any individual railroad wanted a contract with Parmelee, they could proceed

accordingly, but there was never any such contract made.

2007 Q. Do you recall how many vehicles you had of the type that you see here in this bobtail photograph, where you only see half?

A. Yes, sir.

Q. How many of those did you have?

A. Sixty-five.

Q. Do you recall how many other vehicles you had?

A. We had twenty of the eleven-passenger type. We had fifty-one baggage trucks and four service vehicles.

Q. Is that the lot?

A. Yes.

By Mr. McConnell: Where are those documents that you offered, that complaint file?

By Mr. McConnell:

Q. If I can count correctly, there are nine of these letters here which purport to be complaints. Will you look at those and tell us whether you talked to anybody who had the complaint?

By Mr. McConnell: While he is struggling with that, I will have some exhibits marked.

(Thereupon the said documents were marked Plaintiff's Exhibits 127 through 136, for identification.)

By the Witness:

2008 A. The only one I can recall talking to anybody about any of these letters was Mr. Buford, superintendent of the New York Central, July 5, 1954, where he questions the two-a-day baggage transfer, and when this letter was received—

By Mr. McConnell:

Q. No, I just want to know which ones you had a talk with, and you have answered my question.

That was Mr. Buford, is that right?

A. That is right, Buford.

Q. All right. Now this refers to the two-a-day service which you testified about when Judge Thompson examined you. Do you recall that? There was one in the morning and one in the afternoon?

A. Yes, sir.

Q. Did you augment that service in any way?

A. That service was augmented with numerous other trips as the traffic conditions warranted. During the busy times, there may be five or six or ten truckloads go from a certain station to other stations.

Q. In other words, regardless of what you said about two-a-day transfer, you sent vehicles wherever they were needed, is that right?

A. Yes, sir.

2009 Q. And whenever they were needed?

A. Yes, sir.

Q. And that was done through your dispatch system which you told us about this morning?

A. No, that come under a different department.

Q. Well, you tell us how it came in.

A. Our superintendent, Mr. Krock, was watching that end of the traffic very closely and that didn't require dispatching by telephone. The men in charge of the baggage rooms would report as to the volume of baggage that they had, and if it were necessary, additional trips were made aside from the regular two a day.

Q. All right. Now you say you talked to Mr. Buford about this?

A. No.

Q. You didn't? Well, I thought you said—who did you talk to about it?

A. I talked to Mr. Bone upon receipt of that letter.

Q. All right. What happened?

A. I read the letter to him, and he said that he would handle it with Mr. Buford.

Q. That he would handle it?

A. Yes, sir.

Q. Do you know whether he did handle it with
2010 Mr. Buford?

A. I don't know.

Q. You never heard anything further from it?

A. No, sir.

Q. And that was the end of the incident?

A. Yes, sir.

Q. You did nothing about it further?

A. No, sir.

Q. And you don't know what happened about it?

A. No, sir.

Q. Well, it says it was causing some difficulty in the handling of corpses. What was the difficulty about handling corpses?

A. None that I know of.

Q. You don't know what it was?

A. The corpses, I didn't know what it was, and the corpses didn't come under that two-a-day plan.

Q. In other words, you didn't make just two trips for a corpse?

A. No.

Q. You made a trip for a corpse whenever there was a corpse, is that it?

A. That is right.

Q. Now these other complaints, of people complaining, you never saw, is that right?

2011 A. These complaints addressed to me I would know about, but these don't indicate I was involved or mentioned in any of this correspondence, and I don't remember these.

Q. Which documents are you referring to now that you don't know anything about, by identification number? They have a number on there, Mr. Scheeder.

A. Down below—

Q. The first one is Defendants' Exhibit 55?

A. Yes.

Q. What is the next one?

A. I am not included in that. Defendants' Exhibit 53. Defendants' Exhibit 54.

Q. You don't know anything about those?

A. No.

Q. That went to Mr. Klipo?

A. That is right.

Q. You don't know anything about it?

A. There is nothing on here to indicate that it came to our attention.

This is Defendants' Exhibit 49, Iowa State College to the B&O, and there is nothing on here to indicate—

Q. Not whether there is anything on there or not, but do you remember anything about it?

A. I don't recall any of these individual items.

Q. Well, in any event you never talked to any of these people, and you didn't have any chance to find out whether they were telling the truth or not, did you?

A. No, sir.

Q. What is the other group you have there?

A. This is Defendants' Exhibit 47-A, a letter to me from Mr. Kimbel of the passenger traffic department of the Illinois Central Railroad. It refers to insufficient cabs upon arrival of their train on March 9—

Q. Did you talk to Mr. Kimbel about that?

A. No.

Q. All right.

What is the rest of it?

A. This is answered by a letter to Mr. Kimbel.

Q. All right.

Can you tell us what period those complaints cover?

A. The exhibited numbers?

Q. What period of time.

A. Well, March 9, 1951.

2013 Q. Up to 1955, isn't it?

A. What was the question, please?

Q. Up to 1955? That is the period of time?

A. The period of time of these complaints?

Q. Yes.

A. 1951 to 1955.

Q. Wasn't there one earlier than that, in 1949?

A. January 22, 1949.

Q. All right. So you have eight or nine complaints there in how many years, six years?

A. Six years.

Q. I show you documents which are marked for identification as Plaintiff's Exhibits 127 through 136 and ask you if you can tell us whether or not you received these documents through the mail?

A. Yes.

Q. Plaintiff's Exhibit 127 has enclosures with it. I will ask you whether those enclosures were included with the original letter.

A. Yes.

2014 Q. And that is on the letterhead of what company?

A. The New York Central System.

Q. Which is a defendant in this lawsuit?

A. Yes.

By Mr. McConnell: I offer this document in evidence as Plaintiff's Exhibit No. 127.

By the Court: Let me give the jurors a ten-minute recess. You go over all the documents with counsel so we can save time on each document, and then when you come back we will discuss each one separately. Take a ten-minute recess.

(Thereupon a short recess was had, after which the following further proceedings were had outside the presence and hearing of the jury:)

By Mr. McConnell: Mark these as Plaintiff's Exhibits 137 through 154, 155-A and B, 156-A, B and C, and 157, 127-B, 131-B, and 136-B.

Mark these as 158-A and B, 159-A and B, and 160-A and B, all for identification.

2015 (Thereupon the said documents were marked Plaintiff's Exhibits 137 through 154, 155-A and B, 156-A and B and C, 157, 158-A and B, 159-A and B, 160-A and B, 127-B, 131-B, and 136-B, for identification.)

By the Court: Bring out the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

By Mr. McConnell: I believe I offered Plaintiff's Exhibits 127-A through 136, inclusive. Anyway, I reoffer these.

By Mr. Thompson: We object to these documents. No. 127-A is a letter calling attention to the fact of a radio broadcast, and the script of the radio broadcast is 127-B, which, of course, has to do with a birthday party and proves nothing in this case.

It is wholly irrelevant and immaterial, and it is certainly not rebuttal of anything.

By the Court: The objection is sustained to this exhibit.

2016 By Mr. Thompson: This document, 131-A, is an acknowledgment of a letter, 131-B, which is immaterial to any issue in this case as not rebuttal of anything that the defendants have offered in evidence.

2017 By Mr. McConnell: Before your Honor sustains an objection, I think I might say one thing. These

are letters from the railroads, people that are associated with the railroads, commending the service, and it seems to me if we are going to have the complaints we ought to have the commendations.

By the Court: Whatever comes from the railroads is not necessarily admissible unless it has a connection with the issues. This one has nothing to do with service, and this one is a celebration about something.

By Mr. McConnell: It says we did a wonderful job.

By Mr. Thompson: I didn't know the issue in this case was that they didn't render service.

By Mr. McConnell: I didn't either until you started putting in some complaints.

By Mr. Thompson: I thought the issue in this case was whether or not the public was being served.

By the Court: Objection sustained to that exhibit.

2018 By Mr. Thompson: We object to 136-A, which is an acknowledgement of a letter, 136-B, which has nothing to do with the subject matter at issue, which rebuts nothing.

By the Court: Objection sustained to 136-A and 136-B.

By Mr. Thompson: Objection to No. 128, which is irrelevant. It is another birthday letter, and it doesn't rebut anything.

By the Court: Objection sustained.

By Mr. Thompson: Same objection to No. 129, the same sort of a document.

By the Court: Objection sustained to No. 129.

By Mr. Thompson: Same objection to No. 130, the same sort of a document.

By Mr. Freeman: Do you say No. 130 is a congratulatory letter, Mr. Thompson, the same sort of document?

By the Court: Same ruling. Sustained as to No. 130.

By Mr. Thompson: No. 132. Well, that is a different

document. We object to it as irrelevant to any issue
2019 in this case and as hearsay as to all these defendants and not rebuttal to anything.

By the Court: Objection overruled to No. 132.

By Mr. Thompson: It is hearsay, all of it.

By the Court: It is on the Chicago and North Western Railroad system. I will let it go in.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit No. 132.)

By Mr. Thompson: Maybe I didn't look at it. Well, certainly it is hearsay as to everybody else, except the North Western.

By Mr. McConnell: You didn't offer anything that wasn't hearsay.

2020 By Mr. Thompson: We object to Plaintiff's Exhibit 133 as being irrelevant to any issue and as not rebuttal of anything defendants offered.

By the Court: Objection overruled to Exhibit 133. It will go only to the Illinois Central.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 133.)

By Mr. Thompson: I might add that on their case in chief, they offered one congratulatory letter. If that was their case in chief, then it was their obligation to offer all of that sort of stuff, and we object to this as not proper rebuttal. The same thing is true of Plaintiff's Exhibit 134 for identification.

By Mr. McConnell: I object to characterizing our evidence as "all that sort of stuff," and I move to strike it out.

By the Court: Yes. It may be stricken.

The only comment I can make on it is that in
2021 the light of the complaints, this may have some relevancy, and I leave it up to the jury.

The Atlantic Coastline Railroad Company, are they a defendant here?

By Mr. Thompson: No, not in any way related to any part of this.

By the Court: Objection sustained to Plaintiff's Exhibit 134 for identification.

By Mr. Thompson: Plaintiff's Exhibit 135 for identification is a letter from the Chicago North Western Railway to Parmelee Transportation Company. We object to that as not rebuttal of any subject and as hearsay as to all defendants except the North Western.

By the Court: I will let Exhibit 135 go in, limited and only binding as to North Western.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 135.)

By the Court: Do you want to take these, Mr. McConnell? These are admitted, and these are rejected.

By Mr. McConnell:

Q. I show you documents which are marked for identification Plaintiff's Exhibits 137 through 160-B, both inclusive, and ask you to tell us, if you can, whether or not they were received by your company, the Parmelee Company, through the regular course of mail.

By Mr. Thompson: If the witness looked at them during recess, we have no objection to his answering without taking time to go through them all again.

By Mr. McConnell: I don't think he did look at them. If he did, I certainly have no objection to saving the time.

By Mr. McConnell:

Q. Did you have a chance to look at those?

A. Not this noon, sir.

By the Court: How long will it take? Ten minutes?

By Mr. McConnell: I don't think it will take more than a couple of minutes. It shouldn't.

2023 By the Court: Judge Thompson wants to see them.

By Mr. McConnell: Oh, it will take him quite a while, I am sure. He hasn't seen them.

By the Court: Ten more minutes.

(Thereupon the following proceedings were had outside the presence and hearing of the jury:)

By the Court: Are these additional congratulatory notes?

By Mr. McConnell: Yes, but a different category. This is a category from the public, people that have used the service.

By Mr. Meserow: If your Honor please, we are trying to hasten the termination of this trial. Now we have hundreds of complimentary letters in our files which we can bring here, and which will be proper in evidence if your Honor permits these to go in at this time.

We haven't brought them in, intentionally, in order not to delay this matter.

2024 By Mr. Keating: Might I say something on the assumption that these are going to be offered? Initially, your Honor, you recall they offered one letter praising them during their direct case —

By Mr. Freeman: Which was that?

By Mr. Keating: I don't remember.

By Mr. Freeman: I don't remember any letter praising us.

By Mr. Keating: To create the inference of perfect service. Now we have put in evidence of complaints. Now on rebuttal here, the plaintiff is bringing in letters of praise.

He can bring in 10,000 letters. That is not going to prove perfect service. It is like a boy accused of playing truancy from school. He plays hookey one day, and you show that, and he can't rebut that by showing he went to school all these other days. This is going to go on forever with all these exhibits.

By the Court: Unless they are letters from railroad companies, not from the general public, I intend to sustain the objection.

2025 By Mr. McConnell: Can I be heard on it before you sustain it, please?

By the Court: Sure. I said I intend. I didn't say I am doing it.

By Mr. McConnell: Judge Thompson has got, I think, eight or nine letters here, or quotes from letters from the public, which are obviously what somebody in the public said to somebody else which is repeated to this man.

Now we are offering, we have got — I don't know how many, but many more than what we are offering here, letters from people who have used our services, members of the public, and who are satisfied with it, and they write us and tell us so.

As your Honor said the other day, what is sauce for the goose is sauce for the gander. If he can use his statements of complaints, certainly we ought to be allowed to use commendatory letters from the public showing that during that same period of time, the service was satisfactory.

I have tried to lessen the burden by just picking 2026 out a few samples of what we have, and I think that the issue is brought in here by Judge Thompson as to whether or not the service is satisfactory. The first time it was raised was on this cross examination. I never had a chance to meet an issue like that before because it wasn't raised, but he certainly raised it when he put in

this evidence on cross examination of my witness of these complaints.

Now, how can I rebut that except by showing that the public did write in?

By the Court: Except those complaints, as I ruled upon them, or thought I did, were addressed to the Parmelee by the railroad companies, not by individuals.

By Mr. McConnell: No, they were complaints retailed by the railroads from people.

By the Court: That is right. This came from the railroad company, the contracting party, calling their attention to some complaints. But if we are going to open the door here to complaints and compliments, I would rule for each company, both of them, that they have no
2027 relevancy here, not to the issues of the case.

I admitted one of your compliments back to 1948. Certainly it has no relevancy, but I thought maybe coming from a railroad company, it might have some connection with the charge.

I also want to say this, in my judgment, the witness testified to the excellent service of Parmelee, and for that reason complaints could be admissible. But complimentary letters would not be proper at this time because they have no bearing on complaints. If he says that the service was excellent, did you read these letters, that is all.

By Mr. McConnell: I know, but we are dealing with the public all the time. This is a sample.

By the Court: He testified that the service was excellent, that it was good, that they have been on the job all the time. The jury knows that. Now what 2,000 letters from the public would mean, it would take up indefinitely—

By Mr. McConnell: There aren't 2,000 letters. There are only ten.

2028 By the Court: Even fifteen or twenty letters, it hasn't any bearing on the case, and I am going

to sustain the objection.

2029 By Mr. Thompson: I would like to make the observation—

By Mr. McConnell: Did I offer them?

By the Court: Oh, sure. Of course you—

By Mr. McConnell: I identified them and then they jumped in here.

By the Court: No, I didn't say you did. I said you can.

By Mr. McConnell: I want to offer them.

By Mr. Thompson: I just wanted to make the observation, Mr. McConnell, that you had a witness on the stand who testified that rarely ever did they have any criticism of the service, and all I was doing was cross-examining the witness on that issue, and calling his attention to certain documents.

By the Court: That is precisely what I said. It was proper cross examination.

By Mr. Thompson: Exactly, and that is quite different.

By the Court: But compliments are not within the category because the witness testified as to the ex-

2030 cellent service. The mere fact that a layman says bravo doesn't add to it.

By Mr. McConnell: Here is one from a railroad. I will offer this separately.

By the Court: A letter from the railroad, I have already ruled.

By Mr. McConnell: I offer this as Plaintiff's Exhibit 145.

By Mr. Thompson: We object to this as just the usual amenities of an occasion, in which you say it was nice knowing you, and as rebutting nothing and proving nothing.

By Mr. McConnell: Well, it is a railroad that says we are doing all right, as I read it.

By Mr. Thompson: When they got all through telling them they canceled out their arrangements, they said, "Here is your hat; come again." That is about all it amounts to.

By Mr. McConnell: Well, I guess you are not going to rule on that, Judge Thompson.

2031 By the Court: I will let this one go in, dated August 10, 1955, Plaintiff's Exhibit No. 145, in line with the other three or four that I have admitted.

By Mr. Thompson: That is confined to what railroad, please?

By the Court: Limited to the New York Central Railroad Company and Chicago, Rock Island and Pacific Railroad Company.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 145.)

By Mr. Thompson: The latter of which is not a defendant.

By Mr. McConnell: It is one of the twenty-one railroads.

By Mr. Thompson: You don't challenge my statement that it is not a defendant?

By Mr. McConnell: No, I don't have to.

By the Court: All right.

By Mr. McConnell: So the record is complete, I am offering Plaintiff's Exhibits 137 through 160-B, excepting from that group Exhibit 152 and Exhibit 145. I

2032 guess your Honor has ruled on that already. That is this group from the public.

By the Court: Yes, I am sustaining the objection to those.

Bring out the jury.

By Mr. Thompson: Mr. McConnell, I haven't looked at these. Are they just individual letters?

By Mr. McConnell: They are individual commendations of our service from the public.

By the Court: It is upon that representation that I am ruling.

By Mr. Thompson: All right.

Now, your Honor, you have reserved your ruling to Defendants' Exhibit 30, which is that complaint in the Superior Court. We are offering it, among other things, to show what plaintiff here, Parmelee Transportation Company, alleges with respect to its contract with the railroad and how they were made, and so on and so forth, all of which is set forth—

By the Court: Admissions against interest.

2033 By Mr. Thompson: Oh, yes.

By Mr. McConnell: May I see it?

By the Court: Yes, sure. We will take a few minutes recess.

(Thereupon a short recess was had, after which the following further proceedings were had in the presence and hearing of the jury:)

2034 By the Court: All right, Mr. McConnell.

By Mr. McConnell: I have no objection to the foundation for this and the certification for it. I see no relevance to it.

By the Court: It may be received in evidence, as Defendants' Exhibit No. 30.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit No. 30.)

By Mr. McConnell: I have no further questions of this witness.

By Mr. Thompson: I have only one question or two for clarification.

Recross Examination by Mr. Thompson.

Q. Mr. Scheeder, when I handed you these documents during the cross examination and asked you if you received them, in each instance your recollection was refreshed by looking at a letter which you had written in connection with it, was it not?

To refersh your recollection again, as to Defendants' Exhibit No. 53, you were able to say "Yes", that you received that document, because a letter was there
2035 signed by you, or I mean addressed to you calling your attention to it?

A. This letter was addressed to me.

Q. And it relates to this document which is marked as Defendants' Exhibit No. 53, doesn't it?

A. This letter talks about Document 53, but it doesn't say it was sent to me.

Q. Well, it is addressed to you?

A. This letter is addressed to me, but this letter is not. It refers to something about the Rock County Public School, Rock Creek County Public School.

Q. That is right, being transmitted to you by the passenger traffic manager of the North Western, isn't it?

A. This doesn't show that anything was transmitted with this letter, and it doesn't show from what railroad. It is not signed.

Q. This letter from Mr. Mayer, connected with the Rock County school, as it indicates, has this complaint about the—

By Mr. McConnell: I object to reading the contents of that letter, whatever it is. It isn't in evidence.

By the Court: It is in evidence.

2036 By Mr. Meserow: It is in evidence.

By Mr. Thompson: Certainly, it is in evidence.

By Mr. Thompson:

Q. (Continuing) —of the No. 25, and you said you received it before I offered it in evidence.

A. This letter is addressed to Scheeder, but there is nothing in this letter indicating that there was anything transmitted to me as far as correspondence is concerned.

Q. It is the same subject matter on the same subject?

A. It refers to the Rock County Public School tour, and this mentions Rock County Public School tour, but I don't see this letter.

By Mr. Thompson: All right. In order to be sure, we will have it all marked, and mark this one as Defendants' Exhibit 53-A, for identification.

(Thereupon said document was marked as Defendants' Exhibit No. 53-A for identification.)

By Mr. McConnell: Objection to your description.

By Mr. Thompson: I will ask him about it.

2037 By the Court: Yes.

By Mr. Thompson:

Q. Exhibit 53-A relates to the same subject matter as Exhibit 53, doesn't it?

A. Yes.

Q. And 53-A is addressed to you?

A. Yes.

Q. All right.

Now then, as to No. 54, Defendants' Exhibit 54, which I previously said you had received, that is a complaint from Mr. Harrington, and you wrote to Mr. Harrington acknowledging it and explaining it, didn't you, trying to?

A. We wrote to Mr. Harrington whose letter was transmitted to us by the Union Pacific.

2038 Q. So your testimony was right before that you did receive that?

A. Yes.

Q. All right.

A. Just a moment. Yes, we did.

By Mr. Thompson: That is all.

By Mr. McConnell: You may step down, Mr. Scheeder. You are all through, finis.

(Witness excused.)

By Mr. Thompson: I want to read from this document on this subject.

By the Court: Let's first find out if they have any more witnesses.

By Mr. McConnell: I have no more witnesses, your Honor.

By the Court: The Plaintiff rests?

By Mr. McConnell: Yes.

By Mr. Thompson: This is part of the cross examination of Mr. Scheeder.

By the Court: All right.

By Mr. Thompson: I mean, this document refers to the examination of Mr. Scheeder with respect to whether or not there was a contract between the Parmelee Transportation Company and the railroads.

2039 By Mr. McConnell: I object to it as impeaching this witness. He didn't sign this document.

By the Court: What is the document first, for the record?

By Mr. Thompson: The document is the complaint filed by this plaintiff, Parmelee Transportation Company, in the Superior Court of Cook County, in which it recites what the contract and deal is.

By the Court: Objection overruled.

By Mr. McConnell: That doesn't impeach the witness.

By Mr. Thompson: I am not trying to impeach the witness.

By the Court: Objection overruled. I received it in evidence, and it may be read.

By Mr. Thompson: Anyway, Paragraph 6 of this complaint, which is filed by Parmelee Transportation Company, on the first of December, 1955, and signed by Lee A. Freeman as its attorney, reads:

"During the period from January 1, 1955, to on or about September 30, 1955, the Chicago Terminal Railroads in order to provide reasonable facilities for the through routing of passengers and baggage in Chicago as re-
2040 quired by Section 14 of the Interstate Commerce Act, continuously enaged plaintiff to transfer passengers and accompanying baggage between railroad terminal stations or from railroad terminal stations to passenger designated downtown Chicago destinations, and to transfer checked through baggage and trunks between railroad terminal stations. These transfer services were rendered under agreements entered into by plaintiff with the various Chicago Terminal Railroads and with the Western Passenger Association, Chicago Terminal Lines, for and on behalf of each of the defendants—" which is all these railroads.

"—By these agreements the Chicago Terminal Railroads engaged plaintiff to render said transfer services and agreed that no other person, firm or corporation would be granted any right or privilege in connection with or be engaged or permitted to perform such transfer services in Chicago on their behalf. Plaintiff under said agree-
ment was required to meet all trains and to provide
2041 sufficient facilities, and have personnel available at all times to transfer all passengers and their accom-

panying checked or checked-through baggage to whom Chicago transfer coupons were sold or issued on through or combination railroad tickets.

"Said agreements require plaintiff to acquire, operate and maintain buildings, structures, vehicles, equipment and facilities specially designed for and dedicated to such transfer services, and to secure and establish, train and continuously supervise special personnel in the rendition of such transfer services, which services were required to be adequate, reliable and dependable."

Then there is more, but that is all that is necessary to show there was a contract and what its contents were.

2042 By Mr. McConnell: In view of the reading of that document in evidence, I ask leave to keep my case open until I get the answer which the railroads filed.

By the Court: I didn't quite get that.

By Mr. McConnell: He has given us a complaint here, and they filed an answer to that very same paragraph. If you are going to have Mr. Freeman's statement on behalf of Parmelee, I would like to have—were you the attorney?

By Mr. Thompson: I was not.

By Mr. McConnell: I would like to have the answer to it. But with that exception, I am ready to close.

By the Court: If it has relevancy, it certainly may go in.

By Mr. McConnell: All right.

By Mr. Thompson: We have a very limited number of witnesses, about three minutes apiece, to meet Mr. Krock's testimony which was new matter.

By the Court: All right.

Whereupon The Defendants, To Further Maintain The Issues In Their Behalf, Introduced The Following Evidence, In Surebuttal, As Follows:

2043 By Mr. Thompson: I will call Mr. Deitreich.

WALTER R. DEITREICH, called as a witness herein, on behalf of the Defendants in surrebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Will you state your name, please?

A. Walter R. Deitreich.

Q. What is your occupation?

A. Depot passenger agent at the Dearborn Station for the Santa Fe Railroad.

Q. How long have you been depot passenger agent at the Dearborn Street Station?

A. Since February 1st, 1950.

Q. You were on duty there then in the fall of 1955, from October 1 on through December, 1955?

A. I was.

Q. Were you there on October 1, 1955 when the change-over in interstation transfer service occurred?

A. Yes, I was.

Q. What was the facility arranged at the Dearborn Street Station for the loading and unloading of passengers in interstation transfer vehicles?

2044 A. Well, the loading was on the Plymouth Court side or the east side of the station.

Q. And was that a covered loading area?

A. Yes, it was.

Q. Permanently covered?

A. Permanently covered.

Q. Part of the station structure?

A. That is right.

Q. And where was the exit from the station to the loading area?

A. On the same side of the depot.

Q. Through the east wall of the building?

A. That is right.

Q. Now what occurred on the morning of October 1st when the trains began to arrive?

A. Well, the railroad transfer vehicles were on the east side of the station to get the first passengers, but after that the Parmelee system took over, as the transfer buses left.

Q. And these Parmelee vehicles occupied the space then, did they?

A. Yes, they did.

Q. And continued to occupy it?

A. That is right, sir.

2045 Q. For how long a period of time did the Parmelee transfer vehicles park there in the normal loading zone space?

A. Up until about 1956.

Q. Where did the Railroad Transfer Service do its loading?

A. Well, they finally moved to the west side of the station, which is Federal Street.

Q. Was there any cover over that area?

A. No, sir, there was not.

Q. What did the railroad do to take care of that situation?

A. Well, it was necessary to put up a canopy over the walk, and also install lights.

Q. Was there an exit door in the station structure?

A. No, sir.

Q. To the west?

A. No, sir.

Q. How did the passengers when they came in on the trains have to travel to get to the Railroad Transfer Service vehicles?

A. Through the entire length of the station to Polk Street.

Q. They came out the north side of the station
2046 on Polk Street?

A. That is right.

Q. And went west then to Federal Street?

A. Right.

Q. And around the corner to the vehicles?

A. That is correct.

Q. What vehicles were stationed along the front, on Polk Street?

A. That is a cab stand normally.

Q. Taxi cabs?

A. That is right, sir.

Q. All right.

Now on December 20, 1955, in the morning, between 8:30 a.m. and 9:30 a.m., were there 200 people, passengers, waiting in the loading area for interstation conveyance?

A. No, sir, there were not.

2047 Q. Were you on the job every morning at that period of time?

A. I was.

Q. At this particular time in the period from October 1 through December was there an occasion for you to give special attention to it?

A. Well, I gave special attention every day.

Q. Was there something—was this matter of the parking of the Armelee vehicles a matter that ever required further attention?

A. Yes, it was a nuisance.

By Mr. McConnell: I move to strike that out.

By the Court: I will strike it.

By Mr. Thompson:

Q. Well, anyway, did the fact that the two vehicles,

two sets of vehicles were there, cause you to give special attention to routing your passengers around?

A. Yes, sir.

Q. Was there any time in your experience after the Railroad Transfer Service, Inc., took over that there were 200 passengers or a number comparable thereto waiting at the loading zone for Railroad Transfer vehicles?

A. No, sir.

2048 Q. For forty-five minutes or an hour?

A. No.

Q. During the summer of 1956 were there a large number of persons at the Dearborn Street Station between the hours of seven o'clock and eight o'clock each morning waiting for transfer service for forty-five minutes or more?

A. No.

Q. Or in 1957?

A. No.

Q. How long from the time the passengers come to the loading zone for these interstation transfer vehicles elapses before they are loaded and on their way?

A. Well, they are taken care of immediately.

Q. And suppose there is an unusually heavy load coming in, what takes place on the train, I mean?

A. You mean—

Q. Do you have advance notice of this unusually heavy traffic load?

A. Yes, sir.

Q. What do you do with respect to arranging for the number of transfer vehicles?

A. We notify the agent on duty to have extra cars 2049 available.

Q. In the event that there was an insufficient number of transfer vehicles available, how were they reached when the Parmelee people were providing the service?

A. Well, the agent had to call each station to find out how many vehicles they had available.

Q. What about the Railroad Transfer Service?

A. Well, they have the radio service in their cars.

By Mr. McConnell: We have been over this several times backwards, forwards and up and down.

By the Court: Yes, I think you have gone over that a number of times.

By Mr. Thompson:

Q. What about the comparison between the services of the Railroad Transfer Service, Inc., after it took over on October 1, 1955, and the Parmelee service preceding with respect to the movement of the passengers promptly?

A. Well, I would say that the Parmelee service was good, but the Railroad Transfer Service was far superior.

By Mr. Thompson: You may cross-examine.

2050 *Cross Examination by Mr. McConnell.*

Q. Who are you employed by?

A. By the Santa Fe Railroad.

Q. That is one of the defendants in this case?

A. Yes, sir.

Q. How long have you been with the railroad?

A. I have been with them for 18 years.

Q. What is your present position?

A. Head depot passenger agent.

Q. Do you remember what day of the week December 20 was?

A. No, I don't.

Q. Do you remember what you wore that day?

A. Yes, I wore a brown suit.

Q. A brown suit?

A. That is right.

Q. What kind of shoes, did you have brown shoes, too?

A. Yes, sir, I did.
Q. This is how many years ago?
A. This is six years ago—five years ago.
Q. Well, did you have more than one suit?
A. I have several.
Q. Did you then?
2051 A. Absolutely.
Q. Do you remember where you had lunch that day?
A. I had my lunch in the same place every day, which is the Fred Harvey Restaurant.
Q. Well, did you have it there that day?
A. I sure did.
Q. Can you recall what you had for lunch?
A. No, sir.
Q. Can you recall who you had lunch with?
A. I usually have lunch by myself.
Q. Well, can you recall who you had lunch with that day?
A. I had lunch with myself.
Q. You are sure of that?
A. Yes, sir.
Q. On the 20th of December of 1955?
A. That is right.
Q. What was your position on December 20, 1955?
A. Head depot passenger agent for the Santa Fe Railroad.
Q. The same job you have now?
A. That is right, sir.
Q. Do you remember anything else you did that day besides observe traffic?
2052 A. I have my usual duties.
Q. Well, just tell us what you did that day, starting from the time you arrived in the morning, with what time you arrived.

A. I arrived at 7:00 a.m. and check the arrivals of the trains.

Q. What did you do that day?

A. The same thing.

Q. What trains arrived that day?

A. Well, the first train was the El Capitan, the Kansas City Chief, two sections of the Texas Chief, the California Chief, the Super Chief, the Grand Canyon and the Chicagoan.

Q. And you remember checking those trains on that day and remembering that those particular trains came in on that day?

A. Those are my specific duties.

Q. I didn't ask you that.

By Mr. McConnell: Read the question.

(Whereupon, the record was read as above recorded.)

By the Witness:

A. I do.

By Mr. McConnell:

2053 Q. Did you make any memorandum of what happened on the 20th of December of 1955?

A. I don't quite know what you mean by that.

Q. Do you know what a memorandum is?

A. I sure do.

Q. Did you make one that day?

A. Regarding what?

Q. Regarding anything, your duties, what you did during the course of the day.

A. I make quite a few memorandums during the day.

Q. Did you make any that day?

A. Yes, sir, I did.

Q. Did you keep it?

A. I keep mine for three years.

Q. And this is more than three years?

A. That is right.

Q. What do you make memoranda of?

A. Various different things.

Q. Thinks that happen?

A. That is right.

2054 Q. What is that for, to refresh your recollection?

A. No, it is required.

Q. Well, do you keep a diary during the course of the day?

A. We keep memos of everything, a file on it.

Q. But you don't have any of December 20, 1955?

A. Yes, we have some.

Q. I thought you said you destroyed them.

A. There are some that we destroy, some that we keep.

Q. Well, what ones have you kept?

A. The arrivals of the trains on December 20.

Q. You are sure you have that one?

A. Yes.

Q. Have you consulted it before you took the witness stand?

A. Yes, I did.

Q. When did you consult it?

A. This morning.

Q. Did somebody tell you to consult it?

A. No, sir.

Q. So you are remembering what you consulted from your memorandum this morning when you tell me these trains that came in, is that right?

2055 A. That is right.

Q. You weren't giving us your recollection of five years ago?

A. Yes, I was.

Q. Well, reinforced by your memorandum, is that it?

A. No; I just looked at it. That is all.

Q. You thought maybe I might ask you that question, is that it?

A. It could be.

Q. Did you have any conferences with anybody on that day, December 20, 1955?

A. To what extent?

Q. Well, any. Did you have any?

A. You mean on December 20?

Q. On December 20, yes.

A. Quite a few things. That is one of our busiest days. That is right in the holiday period.

Q. Well, now, you just tell us what you did in the way of conferring that day and who you conferred with?

A. Well, I conferred with my depot passenger agents every day of the year.

Q. Do you recall conferring with him on that day?

2056 A. Yes.

Q. So you had a conference with him. What time did you have a conference with him?

A. I have two shifts that come in.

Q. I didn't ask you that. What time did you have a conference with him?

A. Each time a train comes in we have a conference.

Q. All right. What time did you have a conference with him on December 20, 1955?

A. Just as the train came in, about 9:30 or so.

Q. What was he located?

A. He is in my office.

Q. Where was your office?

A. At the Dearborn Station, main floor.

Q. The main floor?

A. Yes.

Q. And you had a conference with him at 9:30. What is his name, by the way?

A. His name is Joe Fricka.

Q. You had a conference with him at 9:30. What was your next conference with him?

A. Well, that is hard to say. That is five years ago.

Q. I know it is five years ago.

2057 A. I don't remember that.

Q. You spoke of the parking of the Parmelee equipment. The place you described as being occupied by Parmelee equipment was a public street, was it not?

A. Yes, it is.

Q. You don't own it, your railroad doesn't own it, is that right?

A. That is right.

Q. And your railroad had no right to exclude Parmelee from that place, did they?

A. No.

Q. And Parmelee was licensed to occupy it and to solicit passengers?

A. That I don't know.

By Mr. Thompson: I object to that as calling for a legal conclusion.

By Mr. McConnell:

Q. You don't know whether they were or not, is that right?

A. That is right.

2058 Q. Who talked to you about your testimony in this case?

A. Mr. John Sloan.

Q. And he is what with the Santa Fe Railroad?

A. Assistant general passenger traffic manager.

Q. He is your superior?

A. That is right, sir.

Q. When did he talk to you?

A. Last Saturday.
Q. What time?
A. Approximately 3:30.
Q. What were you wearing last Saturday?
A. The same suit I have on today, and brown shoes.
Q. Brown shoes?
A. Yes.
Q. A tie—what kind of tie did you wear?
A. A blue one with red dots in it.
Q. Did you have lunch at the Harvey Restaurant?
A. I certainly did.
Q. Did you eat with anybody?
A. No, sir, by myself.
Q. What time was the date you had with Mr. Sloan?
A. 3:30.
Q. Did he call you into his office?
A. No, sir, he came down to my office.
2059 Q. How long was this discussion?
A. Approximately 20 or 30 minutes.
Q. Did you consult any records at that time?
A. Yes.
Q. What records did you consult?
A. The arrival of the trains on December 20.
Q. Those are the ones that you gave us, the El Capitan, the Kansas City Chief, the California Chief, the Grand Canyon and others?
A. That is correct.
Q. So at that time you didn't remember what the trains were did you; you had to look it up?
A. No, sir, I did not.
Q. You went and got the records to find out what it was, didn't you?
A. I know what my trains are that arrive daily.
Q. Why did you have to go to the records to find out what came in that day if you remembered it so well?

A. Just for the arrival time.

Q. What time did these trains arrive?

A. The El Capitan arrived about 9:47.

Q. Did you make a note of this off your records?

A. No, I didn't.

Q. But you read the record, and you noted the time?

2060 A. That is right.

Q. And I suppose you noted the time for each one of these from the records?

A. No, I did not.

Q. You remembered the time, did you, from five years ago?

A. No.

Q. Can you tell us any other time except for the El Capitan?

A. Yes, the two sections of the Texas Chief arrived at 9:47 and 10:00 o'clock, I believe it was. I am not definite on that.

Q. 9:47 is pretty definite isn't it?

A. It was approximately in between, take five minutes or so on it.

Q. 9:47 is a definite time. Do you recall that it got in at 9:47?

A. Between 9:47 and 10:00 o'clock. We had two sections that day.

Q. You remembered that from five years ago?

A. I certainly did.

Q. Not from the memorandum?

A. That is right.

Q. You remembered it got in at 9:47 five years ago without consulting any memoranda?

2061 A. Yes, I would say that.

Redirect Examination by Mr. Thompson.

Q. Do you wear a uniform over there?

A. No, sir, we do not.

By Mr. Thompson: That is all.

(Witness excused.)

By Mr. Thompson: I will call Mr. Bares.

JOHN E. BARES, called as a witness by the Defendants in surrebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thompson.

Q. Your name, please?

A. John E. Bares.

Q. What is your occupation?

A. Stationmaster, Grand Central Station.

Q. Where is your station or office at the Grand Central Station?

A. The station is at Harrison and Wells.

Q. Sir?

A. The station is at Harrison and Wells.

Q. I say, where is your station or place of posi-
2062 tion in the station?

A. I see. Well, the train concourse is just below my office, which is where the people come up from the train. They pass my office going up the steps to the concourse or the carriage court where the vehicles are parked.

Q. The Grand Central Station, this carriage court or circle where you load and unload is in the north side of the station, isn't it?

A. Yes.

Q. On Harrison Street?

A. That is right.

Q. And the entrance is from Harrison Street and they just go around a half circle and out again into Harrison Street?

A. Right.

Q. Now your office or place of working is immediately to the south of the middle of this half circle?

A. That is right.

Q. And then the railroad tracks are on beyond?

A. That is right.

Q. To the south?

A. The south.

2063 Q. What sort of a structure is it that you occupy when you are on duty there?

A. Well, the lower part of it is wood and stone, enclosed by all glass.

Q. So that you can observe the people coming off of the train, going to the station and loading?

A. All around the station except the waiting room.

Q. And loading in the vehicles?

A. Yes.

Q. Now how long have you been in that position at the Grand Central?

A. I have been stationmaster since 1919.

Q. You are the employee of the corporation that owns the station, aren't you, operates the station?

A. The B&OCT.

Q. Is it the Baltimore and Ohio Chicago Terminal Railroad?

A. That is right.

Q. And that is a local corporation that owns the railroad station and the trackage there?

A. Right.

Q. So you are serving all of the railroads that use that Grand Central Station?

A. That is right, sir.

2064 Q. You were on duty during the summer of 1956?

A. Yes.

Q. What time do you go on duty of a morning?

A. Seven o'clock.

Q. Now between the hours of seven o'clock and eight o'clock in the morning are there trains coming into this station?

A. There were.

Q. Regularly scheduled to come in?

A. That is right.

Q. Including what trains?

A. Well, the Baltimore and Ohio Washington Express got in about 6:30 then, that is standard time, and the Capitol, I think it was 7:00 o'clock then, and then we had the Columbian at 7:25.

Q. So that in that period approximately, this is all railroad standard time?

A. Yes.

Q. Chicago Daylight Saving Time in the summer it would be, whatever it is, an hour later or earlier?

A. An hour difference, somewhere in there.

Q. An hour difference and the clock says it is later?

A. Yes.

2065 Q. So that a train coming in at 7:00 o'clock railroad time, that is 8:00 o'clock city time?

A. Yes.

Q. Now between the hours of 7:00 and 8:00, let us say railroad time, were there generally passengers waiting at the loading platform forty-five minutes or so to get transferred?

A. I never knew that to my knowledge. Not while I was there.

Q. Was the same thing true in 1957?

A. It has never happened to my knowledge.

Q. Never happened?

A. I could say this, not to be too specific about it, for instance, if we had a snow storm or traffic was snarled, you might run into about thirty minutes or something like that but never forty-five minutes to an hour, I don't think.

Q. What length of time is your observation that it takes people to load into these interstation transfer vehicles in 1956 and 1957 after they were at the loading zone with their baggage ready to load?

A. From the time they were up there until they left?

Q. Yes.

A. I would say somewhere between ten and 2066 twenty minutes.

Q. And you know of no instance where there was a delay of thirty or forty or forty-five minutes?

A. No. I could say this, that I haven't received a complaint, and that is probably where they would come about it.

Q. You mean in all this period that the Railroad Transfer Service has been serving, since October 1, 1955?

A. That is right.

Q. Now as to getting the passengers away from the loading zone and on their way to the other stations, what is the comparison of the service of the Railroad Transfer Service and Parmelee?

A. Well, I think that this railroad transfer—

By Mr. McConnell: I object to this sort of a comparison.

By the Court: Yes, I think it is improper rebuttal. I don't think they touched upon that phase of it, or have they?

By Mr. Thompson: You mean Mr. Krock didn't?.

By the Court: Has he?

By Mr. McConnell: No. There was no compar-
2067 ison made in our case.

By the Court: Objection overruled. He may answer.

2068 By Mr. McConnell: I object to it. It invades the province of the jury. He can't pass on this. This is a jury question.

By the Court: Objection overruled. He may give his opinion.

By the Witness:

A. In my opinion, it is better due to the fact that the radio manipulated cars are able to be caught in between stations so they know where to go the next time when they unload.

By Mr. Thompson: You may cross examine.

Cross Examination by Mr. McConnell.

Q. How long were you there at that station?

A. Well, altogether I have been there 46-some years.

Q. You say there were waits of somewhere between ten and forty minutes?

A. No, I said that they took them about ten to twenty minutes to load the passengers, depending on the size of the train that came in.

Q. Have you ever heard of complaints about delays in the checked baggage by the Keeshin company?

A. No. Baggage wouldn't come to me. They would go to the baggage agent.

2069 Q. You are employed by the station?

A. Yes, I work for the B&OTC Railroad, who operate the station.

Q. Who owns the station?

A. The Baltimore and Ohio CT, as far as I know. I never saw the contract, deed, or anything like that, so I don't really know.

Q. The Baltimore and Ohio is a railroad, is it not?

A. That is right, the railroad.

Q. And they own the station?

A. They own it, or the B&OCT, I don't know.

Q. You don't know who owns the B&OCT, is that right?

A. I presume the B&O does, but I have never seen anything to prove it.

Q. Who asked you to testify here?

A. Well, the general manager asked me Saturday to be prepared to come up here if I was called, but I wasn't called until this morning.

Q. The general manager of what?

A. The B&OCT, Mr. Strayder.

Q. Did you talk to some lawyer?

A. I talked to Mr. Thompson this morning up here.

Q. Now, were your duties there at that station?

A. I am both station master and yard master.
2070 I have both duties, in charge of red caps, all the operations, tracking the trains, various other things, anything that may happen. Any complaints that might come in, they may come to me or go to the passenger department.

Q. What are your duties as yard master?

A. I handle all the equipment for the three railroads in the depot. That is head end cars, mail, express, you know.

Q. You are talking now about—what equipment are you referring to?

A. Head end equipment and the rear end equipment, as far as that goes. Head end equipment consists of mail and express cars, baggage cars, RPO cars.

Q. You supervise the unloading of those cars?

A. No, I don't supervise the unloading, but I supervise the switching and handling of the trains.

Q. When you are doing that job, where are you?

A. Probably down in the yard.

Q. And when you are down in the yard, you aren't watching what is coming in at the loading platform for transfer service, are you?

A. Usually at the time the train arrives—

Q. You aren't in the two places at the same time, are you?

2071 A. I can't be, and nobody else can be. That is understood.

Q. How far is the yard from—

A. The station extends from Harrison and Wells. My jurisdiction ends just about Taylor Street and Franklin and Wells.

Q. You might be a couple of blocks away if you were down in the yards?

A. As a rule when the trains arrive I am in the office.

Q. I say you could be a couple of blocks away?

A. If anything occurred, it would be more important for me to be there, I would be there, yes, wherever I thought it would be fit to be. That is where I would be.

Q. Well, you can't tell us where you were at any given period of time on any given day, can you?

A. I am not trying to.

Q. I say you can't, can you?

A. No, I wouldn't attempt to.

Q. And while you were down in the yards, things could happen up—

A. That is right.

Q. (Continuing)—in the station that you wouldn't

2072 know anything about?

A. That is perfectly right.

Q. Who is Mr. Eichner?

A. Eichner is in charge of mail and express, and his office is in Baltimore.

Q. Who was in the station that would have to do with complaints on baggage?

A. Mr. Tilquist. He is the baggage agent.

Q. Tilquist was employed by the station?

A. He is a B&OTC man.

By Mr. Thompson: What was the question?

(Whereupon the record was read as above recorded.)

By Mr. McConnell:

Q. Do you know whether Mr. Eichner was here in 1955?

A. No, I don't. I don't have any connection with him whatever.

2073 Q. Did you ever have any connection with anybody at Parmelee? I mean, did you ever take up with them any complaints of any kind?

A. Well, usually my complaints would come direct from the passengers, so there wouldn't be anything on paper, and those complaints that came to the passenger department, I would probably be asked about, but that would be all. After that it would skip my mind because they were handling it, so I don't—

Q. You don't recall ever making any complaints to Mr. Scheeder?

A. This gentleman that was sitting here, you mean?

Q. Yes.

A. No. I never use paper. I use the telephone.

Q. I didn't ask you whether you ever used paper. I asked you whether you ever made any complaints to Mr. Scheeder?

A. I made complaints to the Parmelee Company, yes. I usually done it through the agent.

Q. I didn't ask you that. Did you or didn't you?

A. No, I didn't. I don't believe he was on the job then, to tell you the truth?

Q. When?

A. You say what year?

2074 Q. I am talking about any year you are there. You have been there forty-six years.

A. That is right. I don't know how long he has been there.

Q. Well, I am just asking you, in your forty-six years in that position, if you ever made any complaint to Mr Scheeder and I take it your answer is no.

A. No.

By Mr. Thompson: Of course, the question is whether the witness could identify Mr. Scheeder when he is telephoning the Parmelee Company to make his complaints.

By Mr. McConnell: Well, it is nice to have your testimony on this, but I move to strike it out.

By the Court: It may be stricken.

By Mr. Thompson: Objection.

By Mr. McConnell:

Q. You never wrote any complaints you said?

A. No.

By Mr. McConnell: I have no further questions.

By Mr. Thompson: That is all.

(Witness excused.)

2075 By Mr. Thompson: Defendants rest.

By the Court: Both sides rest?

By Mr. McConnell: No. You can't rest yet, Judge Thompson.

By Mr. Thompson: Can't I?

By Mr. McConnell: No, because I haven't rested.

By Mr. Meserow: You have rested about three times.

By Mr. McConnell: No, I didn't. I have a very express understanding with the Judge that I will be permitted—

By the Court: Except as to the admissibility of an answer. I want to let the jury go home, if we can.

By Mr. McConnell: I want to read something to the jury before they go and then I am through. I don't want to hold you more than thirty seconds.

By the Court: All right. You are reading from an answer?

By Mr. McConnell: I will first have it marked and offer it in evidence as Plaintiff's Exhibit 161.

(Thereupon the said document was marked Plaintiff's Exhibit 161, for identification.)

By Mr. McConnell: I offer it in evidence as a copy of the answer filed by the firm of Winston, Strawn, 2078 Smith and Patterson, as attorneys for Earl B. Padrick as agent for the Chicago Terminal Lines and all defendants.

By Mr. Meserow: If the Court please, I am going to object on behalf of Keeshin and the Railroad Transfer Service. We are not parties to that suit, had nothing to do with it, no connection whatsoever and it is not binding on us at all.

By the Court: It is admitted only to these parties to the answer if it is admissible, I haven't heard yet what it is.

By Mr. McConnell: It is the answer, your Honor, to the complaint.

By the Court: I didn't mean admissible. If it is relevant.

You may show it to Judge Thompson.

By Mr. Thompson: I would like to look at it because I don't happen to be a party to that lawsuit and I don't believe you were.

By Mr. McConnell: No, I wasn't in it. I have enough suits with you now without getting into any more.

By Mr. Thompson: I missed that gem.

No objection.

By the Court: It may be admitted.

2077 By Mr. Thompson: Except it is hearsay.

By Mr. McConnell: Well, it is hearsay, all right.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 161.)

By Mr. McConnell: Page 7 of the complaint — this is in evidence, if the Court please.

It is alleged in the complaint:

> "During all times material plaintiff rendered adequate, reliable and dependable transfer services at reasonable rates and charges, and at all times made available sufficient buildings, structures, vehicles, equipment, facilities and trained and efficient personnel to conveniently handle all transfer traffic which might be presented in fulfillment of all terms and conditions of its agreements with each of the defendants."

Now that is the second sentence in Paragraph 7, and the answer is:

> "Admit the allegations in the second sentence of Paragraph 7."

With that plaintiff rests.

2078 Thereupon the plaintiff rested its case in rebuttal.

By the Court: Both sides rest?

By Mr. Thompson: That is right.

Thereupon the defendants rested their case in surrebuttal.

2079 By the Court: All right.

Have a nice evening. We have seen the end of the testimony. Tomorrow you will hear the arguments of counsel.

We will start tomorrow morning at 10:00 o'clock sharp. Please don't discuss this case with anyone. We have one more day to go. I will not admonish you anymore.

By Mr. McConnell: May I say something?

By the Court: Yes, sure.

By Mr. McConnell: You are starting at 10:00. I have that thing that I have been talking to your Honor about that was set at 9:30 in the morning so that I could be there and be back here at 10:30.

By Mr. Thompson: Can't they put it over once more so we can get through tomorrow?

By the Court: I have given you my word, and I will keep faith with you. Could Mr. Freeman discuss the instructions in the morning in your absence?

By Mr. McConnell: Yes, I think so.

By the Court: You will be here at 10:00 o'clock, ladies and gentlemen.

I might say this to you, if I may. In all fairness to you folks, you may leave word at your homes, respec-
2080 tively, that you may be tied up a little later tomorrow night. If the arguments last a little longer, you will get the case a little later, and once you get it, you have got to deliberate.

So I am merely alerting you now so that nobody should worry about poor you not coming home on time or getting supper ready.

Good night, and have a nice evening.

2081 (And thereupon the following proceedings were had outside the presence and hearing of the jury:)

By Mr. Thompson: I have instructions.

By the Court: I would like to meet with the lawyers tomorrow at 9:30, if I may, and we will discuss the instructions. Do you want to open the arguments?

By Mr. Freeman: Mr. McConnell will open.

By Mr. McConnell: I will open, your Honor.

By the Court: And close?

By Mr. McConnell: Yes. I will be here as soon as I can.

By Mr. Thompson: We will never get this case to the jury tomorrow unless —

By Mr. McConnell: Other people around here have engagements, too.

By Mr. Thompson: I have others, too, but this is the one we have to meet. We are never going to get this case to the jury at a decent time if we don't start right off. We have to start.

By Mr. McConnell: All we are asking of the court is half an hour.

By the Court: I said, I gave you my word. We didn't specify what time, but I never interfer with a lawyer
2082 with an intervening few minutes. You come here as soon as you can.

By Mr. Thompson: Why can't we be here at 9:30?

By Mr. Freeman: I don't want to discuss the instructions with the Judge and with you, as I would rather Mr. McConnell do so.

By the Court: You mean you wouldn't discuss them without him?

By Mr. Freeman: I would rather not. I think the responsibility for this case has been Mr. McConnell's. I have only tried to help out on offers of proof.

By Mr. Thompson: We won't get to the jury until noon.

By Mr. McConnell: I don't think we will take much time on instructions.

By Mr. Thompson: As far as I am concerned, I don't care if we spend any time on it.

I hand the Court the instructions I request, and I hand

counsel copies, and you can pass on them. I don't need to argue them.

2083 By the Court: Have you your instructions here?

By Mr. McConnell: Yes.

By the Court: Have you exchanged instructions among yourselves?

By Mr. Thompson: Not yet.

By the Court: I wish you would now hand each other copies of your respective instructions.

By Mr. McConnell: Have you the instructions here or not?

By Mr. Francis McConnell: Yes.

By the Court: Give each one a copy of the instructions, and I will take a copy of yours, too, and you can read them so that we will not spend much time.

By Mr. Meserow: Do you want any markings that they came from our side?

By Mr. McConnell: I can see right away we will have some argument on these from looking at one.

By Mr. Thompson: Judge Adesko will accommodate you again in the morning, I am sure, my dear sir. We are never going to get to the jury.

By the Court: We will have the reporter there and the arguments on each one, and I will rule on each one separately. I would like you to mark the plaintiff's A, B, C, and so forth, and the defendants' 1, 2, and 3, so

2084 that when we speak of them for the record we will know what we are talking about, which instruction we are talking about.

By Mr. Meserow: Why don't we do it now?

By Mr. Tone: May we do it now, your Honor?

By Mr. Thompson: I will just do it with the lead pencil. If you are going to send these to the jury there should be no numbers on them.

By the Court: Give me a carbon copy. I want the carbon copy.

By Mr. Thompson: You have the original.

By the Court: You keep them. I just want a carbon copy marked, and you can give them to me tomorrow.

By Mr. Thompson: I wanted to get you to work tonight.

By the Court: I will check them, but I want a carbon copy instead of the originals.

By Mr. Thompson: Right now?

By the Court: Yes. This is your carbon copy?

By Mr. Thompson: Yes.

By the Court: It is the defendants' carbon copy, and the plaintiff's will be A, B, C, and so forth.

By Mr. Thompson: I suppose they are in the same order, aren't they? Do you want me to keep the originals?

By the Court: Yes, and give them to me tomor-
2085 row morning.

By Mr. Thompson: Can you be here, please, Mr. McConnell?

By Mr. McConnell: Judge, we are going to get through with this case tomorrow. There is no doubt about it, no question about it.

By the Court: I said you may come in when you get through over there.

By Mr. McConnell: As soon as I get through I will come over. That case to me is just as important as this one. I was in it for nine solid weeks on trial, and I am still on trial. Technically I am still on trial. I am supposed to be there.

By the Court: All right; we have passed that one.

By Mr. McConnell: I would like, if I can, to read these myself. This has been prepared in my office. I have never had a chance to see these instructions.

By the Court: Tomorrow morning you bring them in with you. Could we do this?

If we can save an hour, do you have to work tonight on the other case?

By Mr. McConnell: Yes, I do.

By the Court: All right, tomorrow morning as soon as you can come in, and I will set it down here for 10:15.

By Mr. McConnell: I may be here at 10:00 2086 o'clock, but I will be here as fast as I can.

By Mr. Thompson: I wouldn't want you to strain yourself.

(Whereupon an adjournment was taken in the hearing of the above-entitled case to the following day, Tuesday, May 10, 1960, at the hour of 10:00 o'clock a.m.)

2087 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Tuesday, May 10, 1960,
10:00 o'clock a.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Bonn, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

2088 Present (Continued):

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company;

Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

2089 And thereupon the following further proceedings were had herein:—

By the Clerk: No. 56 C 323. Parmelee Transportation Company *v.* John L. Keeshin, et al. Case on trial.

(Whereupon the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: Are you ready for the instructions, all of you? Have you exchanged instructions with each other? Do you want to come in chambers?

By Mr. McConnell: I think we had better do it out here, because we have so many papers.

By the Court: All right. Excuse me a moment.

(Whereupon a short recess was had, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right, gentlemen. We will take the plaintiff's first.

By Mr. McConnell: Maybe you had better have
2090 the originals, your Honor; you can read them easier.

By the Court: I can read these all right. If we reject some, I want the parties to take them out and mark them. Well, I had better have the originals, so I can mark them "Refused," the ones that are refused.

By Mr. McConnell: I would like the carbon back, if I may, because that is the only copy I have to refer to.

By the Court: Fine.

By Mr. Thompson: If the Court please, before we start with the instructions, now at the close of all of the evidence, defendants, by their atterneys, move for a directed verdict and the entry of a judgment in our favor on the ground there is no substantial evidence or any evidence sufficient to support a finding that the selection by the Chicago terminal railroads of the defendant, Railroad Transfer Service, Inc., rather than plaintiff, Parmelee Transportation Company, to perform the Chicago interstation transfer service from and after October 1, 1955 was reasonably calculated to injure the public or that the public has suffered any injury, any lessening of service or the loss of superior service as a result of said selection.

2091 There is no substantial evidence or any evidence sufficient to support a finding that any increase of the cost of transfer coupons which might have occurred as a result of the selection of Railroad Transfer Service, Inc., to perform the service was passed upon to the traveling public through any increase in fares, or that plaintiff would have rendered a service superior or equal in quality or extent to the service rendered by Railroad Transfer Service, Inc., or that plaintiff would have been able to carry on the service without interruption by reason of a strike or strikes by its employees, or that plaintiff would not have terminated the service by reason of inability to make a satisfactory wage settlement with its employees.

This we will file in writing as soon as we have time to get it in shape.

By Mr. McConnell: I would like to make a motion for a directed verdict on the special issue that has been defined or set up, at least, by your Honor, and the ground

of my motion which I likewise would like leave to support in writing for the record is that the contract which is in evidence creates a price-fixing provision as to the baggage which is checked and as to the pickup and
2092 delivery baggage and as to the transfer of remains, being an agreement between all the railroads on the one hand, competing railroads who were doing business with the Keeshin Company, and the transfer company on the other.

Under every decision that I am familiar with that has dealt with this matter by the Supreme Court such arrangements, price-fixing arrangements are illegal per se, and even in the case which your Honor stated you were relying on by Judge Latham Castle, he makes that distinction.

That is that the public injury is manifest once you show there is an agreement to fix prices of services or commodities in interstate commerce.

I want to point out that Judge Major once undertook for this Court of Appeals to carve out an exception of that rule by the Socony Vacuum Case, and he was reversed by the Supreme Court, the Supreme Court saying it doesn't make any difference how you fix the prices up or down, that anything you did with prices was illegal per se under the Anti-trust laws, that you could not be justified by any showing of reasonableness.

There isn't any denial of the contract. The contract is in evidence, and it expressly provides what the charges are. It says there will be a tariff rate of charges
2093 on the pickup and delivery service, that these are to be paid by the passengers, not by the companies or by the railroads.

As to baggage which is being carried over from one station to another to be checked, it is provided that each piece is twenty-five cents, and the parties doing the carry-

ing have to charge that to the public so that the parties are agreeing among themselves what the public is to pay, a direct injury to the public.

2094 It is direct injury to the public under every applicable decision that ever had anything to do with that subject. I don't want to labor the point, but I want to read to your Honor what the court said about it in the Masonite case referring to price fixing.

I am reading from United States v. Masonite Corporation — that is that building supply company — 316 U.S., at page 282. It is 86 Law Edition, page 1477.

The Court said:

> "The power of Masonite to fix the price of the product which it manufactures, and which the entire group sells and with respect to which all have been and are now actual or potential competitors, is a powerful inducement to abandon competition. The extent to which that inducement in a given case will have or has had the desired effect is difficult, if not impossible, of measurement. The forces which that influence puts to work are subtle and incalculable. Active and vigorous competition then tends to be
>
> 2095 impaired not from any preference of the public for the patented product but from the preference of the competitors for a mutual arrangement for price fixing which promises more profit if the parties abandon rather than maintain competition. The presence of competing patents serves merely to accentuate that tendency and to underline the potency of the forces at work."

Then they say:

> "It is outside our competence to inquire whether the result was or was not beneficent or whether the evil was or was not realized. As in case of an ap-

praisal of the reasonableness of prices which are fixed, such a determination could satisfactorily be made 'only after a complete survey of our economic organization and a choice between rival philosophies.' The power of this type of combination to inflict the kind of public injury which the Sherman Act condemns renders it illegal per se."

I could read many decisions on it, but here there
2096 is no question, no dispute in the evidence about it.

We have a contract which fixes the price of carrying baggage for a million and a half people that use the service every year, and on that ground I move for a directed verdict.

2097 By Mr. Thompson: In view of the motion that has just been made, we add to our motion for judgment for the defendants that the complaint fails to state a claim upon which relief can be granted, and that the offers of proof made by plaintiff do not establish the violation of the Anti-trust laws even if they were accepted.

By the Court: I have indicated before or some time ago that I felt strongly that the plaintiff did not bring its case within the family of anti-trust law on the proof submitted and on the offers of proof, and I am as strongly so inclined now as I ever have been, and I will so hold.

I will ask the defendants' counsel to prepare a findings of fact and conclusions of law on the subjects that I have outlined in the record heretofore:

First, as to the contract, the railroads had a right to act concertedly in the granting of the contract, and that no question of monopoly enters into it;

That they had a right to, and that the defendant corporation, the Railroad Transfer, had a right to accept that contract without any concern about the anti-trust

law and without any monopoly;

2098 That it has covered the same subject matter that the plaintiff has enjoyed for many years under similar circumstances and conditions, and virtually in the same territory, I think.

Secondly, they have said, and I want to make findings of fact and law on it, that in the Atchison case *v.* City of Chicago adjudicated by the Court of Appeals and the Supreme Court of the United States, subsequent to the holding by Judge Sullivan that the pleadings were sufficient in the allegations, the Court has held and Parmelee is bound by it because it intervened in that case—in those cases, all three of them, before Judge LaBuy, before the Court of Appeals, and before the Supreme Court of the United States—that the matter belongs under Interstate Commerce. A contract was filed with the Interstate Commerce Commission, and the subject matter is entirely under its jurisdiction.

Finally, on the motion for a directed verdict made at the conclusion of the plaintiff's case, I took it under advisement then, and I will take it under advisement now, although I strongly feel and I intend to so instruct the jury that only the services covered by the contract awarded to the defendant corporation by the rail-

2099 roads and contained in the bid of the plaintiff for such services and that scope are the only issues before this jury; nothing else.

Any other services that they may have rendered voluntarily or by private arrangement with the public is no concern of this court or of this jury, and therefore it ought not to belong in any consideration by this jury.

I feel inclined to agree with the defendants that under that ruling the plaintiff has failed to prove a case, but I am going to reserve my ruling and submit it to the jury in order to complete the record so that the Court

of Appeals will have exactly what has been done here, what has been said here, what has been found here, and what has been held here.

Both motions will be overruled, and I am reserving my ruling until after the verdict is in.

2100 By Mr. McConnell: If the Court please, on the question of findings of fact which you are asking counsel for the defendants to prepare and submit, we have brought an anti-trust case in this court within the rules of this court and the Constitution of the United States. We asked for a jury trial: We have never waived our jury trial, and we submit that findings of fact or issues of fact as presented by the pleadings are for the jury, and I want the record to show that.

By the Court: That is correct, except when the Court holds that the case has not been made out. That is a question of law, and that I am going to decide upon in my own findings of fact, on the facts submitted to me and on the offers of proof.

I am going to find that if everything is proven and established, it does not constitute a cause of action such as is contemplated by the complaint, and does not belong in the family of anti-trust law.

By Mr. McConnell: That is a question of law which your Honor is within his province on, but I am referring, so the record will be perfectly clear, I am taking the position that any question of fact within the issues in this case is a jury question and we object to findings of

2101 fact by the Court.

By the Court: You are right, counsel. I did not mean to say I want to make findings of fact. I want to recite in there the proof offered before me and the offers of proof made before me, and I will conclude as a matter of law that it does not constitute a good cause of action.

All right, let's talk about the instructions now. I have read the defense instructions so let's go over them first.

By Mr. Thompson: You are taking up defendants' instructions first?

By the Court: Yes. Defendants' instructions first, No. 1—

By Mr. Thompson: Before we leave these preliminary matters, I want to be certain that the issue of damages and also the counterclaims of the defendants which are in the record are continued for further disposition.

By the Court: Oh, yes. I have nothing before me on that at all, and I cannot pass any judgment. I will reserve the entire matter on the counterclaims. No offer of proof has been made and no testimony has been offered, and I cannot do any adjudicating.

By Mr. Thompson: I just want to know that
2102 they are separated and continued for later disposition.

By the Court: No question about it.

Defendants' Instruction No. 1, I think the word "before" is misspelled, the very first word in the original. If you will make that correction, please.

By Mr. McConnell: That is a stock instruction, I guess. We don't have any objection to that one.

By the Court: No objection. All right.

2103 By the Court: All right, No. 2.

By Mr. McConnell: Well, I object to the phrasing of this.

"This is a civil suit and in determination of your verdict, you are the judges only of the facts."

They are the sole judges of the facts. I don't know why the jury should be crowded into the position that they are only the judges of the facts.

It is all right if your Honor wants to tell them you are

the sole expounder of the law, and that the province of the jury is to find the facts, but they are the sole judges of the facts if it is going to go to the jury.

By the Court: I have no objection to changing it to "the sole judges of the facts."

By Mr. McConneell: Aside from that, I have no objection to the instruction.

By the Court: I have put in the words "You are the sole judges"; and I struck out "only"—the rest of it reading "of the facts."

That is No. 2.

All right, No. 3.

By Mr. McConnell: I have no objection to No. 3.

2104 By the Court: All right, No. 4.

By Mr. McConnell: Well, I object to the first sentence of this instruction. There is no objection to the remarks, innuendos and insinuations.

By the Court: You object in the original objection of separation of issues.

By Mr. McConnell: I think that that instruction should cover the entire issue, not just running it in with this. There are other instructions on that. We have some ourselves.

By the Court: I will read yours, but I will give this one.

No. 5.

By Mr. McConnell: You are going to give No. 4?

By the Court: Yes.

By Mr. McConnell: I except to the giving of No. 4.

By the Court: No. 5.

By Mr. McConnell: The verdict, of course, must be based upon the evidence, but the jury has a right to infer from evidence certain conclusions.

This would tend to leave them with the belief they couldn't. I object as limiting them too much.

By the Court: Overruled. I will give it.

2105 By Mr. McConnell: Exception.

By the Court: Let the record show an exception. No. 6 is a stock instruction.

2106 By Mr. McConnell: That is all right, but I don't see the use of repeating the same instruction over and over again. We have told them that in several different ways. I have no particular objection to it, except it is repetitious.

By the Court: No. 7.

By Mr. McConnell: I don't think that is a correct instruction on the preponderance of evidence. Objection.

By the Court: I will give it.

By Mr. McConnell: Exception.

By the Court: No. 8.

By Mr. McConnell: I have no objection to No. 8.

By the Court: No objection. All right.

No. 9.

By Mr. McConnell: This is a proper element. No. 9 says the jury can't consider evidence that is in the record. We have evidence in the record of what the coupon rates are by the different parties. That is relevant on whether or not the reasons given for changing this service were as stated.

We certainly have a right for the jury to consider the evidence which they offered, of the difference in rate, and so forth.

2107 You have an instruction here that it doesn't affect the charge to the public.

By the Court: This instruction, I think, goes to the very heart of my ruling, and I am going to give it.

By Mr. McConnell: Exception.

By the Court: Note the exception.

By Mr. McConnell: We are very seriously prejudiced by the giving of that instruction.

That is a peremptory instruction, your Honor.

By Mr. Thompson: You are still talking about No. 9?

By Mr. McConnell: Yes. That is a peremptory instruction.

By the Court: I will give it.

Pardon me a second, please.

(Whereupon a short recess was had herein, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By the Court: All right.

By Mr. Meserow: No. 10 is next.

By the Court: No. 10.

2108 By Mr. McConnell: This instruction tells the jury that if you violate the anti-trust laws—in effect it tells them that—that the fellow who does the violating, giving better service than the one who is the victim, that there is no violation, and I think that is not the law, absolutely not the law, and I object to it.

By the Court: I will give it.

By Mr. McConnell: Exception.

No. 11 is an instruction that people who are members of the public, as I read it.

By the Court: That is correct, not as such.

By Mr. McConnell: I object to giving that.

By the Court: I will give it.

By Mr. McConnell: Exception to the giving.

By the Court: That is all right.

By Mr. McConnell: And No. 12:

"The jury is instructed as a matter of law an exclusive contract with one transfer company executed jointly with the Chicago terminal railroads does not constitute violation of the anti-trust laws."

2109 I have filed briefs with your Honor.

By the Court: That goes directly to the heart of it, and I will give it.

By Mr. McConnell: I am going to except to it.

By the Court: All right.

2110 By Mr. McConnell: Same objection to this as to the other, that the comparison of those services does not come within the purview.

By the Court: I will give it. No. 13.

By Mr. McConnell: Exception.

By the Court: No. 14.

By Mr. McConnell: Same objection to that. Comparison of the two is the sole proof of public injury.

By the Court: I will give it.

By Mr. McConnell: Exception to the ruling.

By the Court: All right.

By Mr. McConnell: Our suggestion on this is that the form of verdict should be:

"Do you or do you not find public injury?"

By the Court: I have never seen this form of verdict.

By Mr. McConnell: This is signed by all the jurors. The foreman of the jury signs the verdict, as I understand the law.

By Mr. Thompson: It is an interrogatory that is going to be submitted to the jury. When you separate the issues you have an interrogatory submitted to the jury,

2111 and the interrogatory will be answered yes or no as they were instructed in Instruction No. 14.

By Mr. McConnell: Could you reserve your ruling on that until you see our selected form of verdict?

By the Court: Yes, I will hold it up on that.

Now, we will take the plaintiff's. I think all of your objections, Mr. McConnell, are based on the original propo-

sition which I have ruled on at the outset, and do not go to the form of verdict, because these instructions are merely in line with what I have said all through the hearing, and I am standing by them, as a matter of law.

By Mr. Freeman: Your Honor, I don't understand your ruling to be that way. For example, when we objected to the exclusions of portions with reference to the public or the entire public you said, "Yes, under these circumstances."

I don't understand that.

By the Court: Which is that? You are talking about the stockholders?

By Mr. Freeman: Yes.

By the Court: They are litigants. They are not the public. Stockholders and the railroads are not the public in this lawsuit as such, because they are litigants, 2112 and they are parties to it.

No. A.

By Mr. McConnell: This is a stock instruction.

By Mr. Freeman: Your Honor, may I say further in that regard, there are twenty-one railroads involved. The defendants and litigants in this case are only six railroads, so we do have a segment of the public that you are now excluding, the railroads as well as the stockholders, and I wondered if you intended to restrict the issues even further than you had previously ruled?

By the Court: They are parties to the contract, as I understand it.

By Mr. Freeman: They are not parties to the litigation.

By the Court: They are parties to the contract, as I understand it, and all twenty-one are parties to the contract and beneficiaries of the service.

By Mr. Thompson: That is right.

By the Court: All right.

By Mr. Thompson: No. A is the same in substance as our No. 1, and we don't care which one is given.

By the Court: I think it is repetition.

By Mr. McConnell: It is a pretty good instruction,
2113 though.

By Mr. Thompson: Both of them are. I say they are both the same thing practically.

By the Court: I have no objection, and I will substitute yours for the first one here.

By Mr. Thompson: Your Honor, you may want to look at the two of them and see which one of them you want to give. It doesn't make any difference to us. You don't want to give both of them.

By the Court: All right.

By Mr. McConnell: There is more in ours than in yours.

By the Court: I will give theirs, and either you withdraw yours, your No. 1, or I will refuse it, either way.

By Mr. Thompson: Whatever the Court does.

By the Court: I will mark No. 1 refused, and I will give theirs, their No. A.

By Mr. Thompson: They are the Court's instructions, not ours, of course.

By the Court: All right, I am giving theirs.

By Mr. McConnell: I will be just as generous as Judge Thompson, and I will withdraw No. B, because they have one that covers it.

By the Court: No. B?

2114 By Mr. McConnell: Yes.

By the Court: All right; No. B is withdrawn.

By Mr. McConnell: They have one that covers the same subject.

By the Court: Do you want to take it back, No. B?

I have no carbon set, of course, and I am only handling them as they are, the originals.

2115 By Mr. McConnell: I think Instruction C should be given. It is a stock instruction. You have told the jury that several times.

By the Court: I have given one complete instruction on that so I will refuse C, only because it is repetitious.

By Mr. McConnell: You haven't given this. You haven't got anything about "therefore during the progress of the trial—". That is a very important instruction in view of all the by-play and talk.

By the Court: What is that?

By Mr. McConnell: "If therefore during the progress of the trial you gather any impression from anything which the Court may have asked of a witness or may have stated in his rulings or in the course of discussion with or of counsel with respect to the facts of this case or the weight of the evidence or the credibility of any witness, you should disregard that impression."

Certainly in this case we have had enough talk in the papers and elsewhere so that this is very important.

2116 By the Court: I see no objection. I am sorry I marked it "Refused."

By Mr. Freeman: Do you want a carbon of it so your copy won't show that?

By the Court: Yes. I will take a carbon and I will give that one.

Let the record show that Instruction C is given.

By Mr. Thompson: We have got one that duplicates it. Your Honor can look through them and make a choice.

By the Court: I don't mind that duplication.

By Mr. McConnell: Instruction D is a stock instruction.

By the Court: I have no objection. That will be given. Instruction E.

By Mr. McConnell: That is a stock instruction. I think hat should probably be "as defined by other instructions." 'hat should be added to that.

By Mr. Thompson: Of course, D is not a proper instruction.

"The Court instructs you that if you believe a
117 witness has testified falsely as to a material issue of fact, you are free to disregard any and all of the testimony of the witness."

By the Court: That is correct, unless it is corroborated by other credible evidence, and so on.

By Mr. McConnell: Yes, that can be in there. I have o objection to that.

By the Court: I am going to give two instructions f my own. It will be the same as you have got here on he preponderance of the evidence. I don't like the brevity f this. I will submit it to you before I give it, for both) and E.

By Mr. McConnell: All right.

By the Court: I will mark both of them "Refused" for he record so there will be no question that we have had hem before us.

I want to make a note here this is on witness testifying a'sely and the other one is preponderance of evidence.

All right.

By Mr. McConnell: The next one is the number of vitnesses. That is a stock instruction, Instruction F.

By the Court: I am going to refuse it. I will give
118 one of my own on the number of witnesses. I don't think I want to associate it with either side.

I will mark this one, Instruction F, "Refused."

By Mr. McConnell: Instruction G, I think has already been given.

By the Court: Do you want to withdraw G? I have given it?

By Mr. Thompson: Yes.

By Mr. McConnell: I will withdraw it.

By the Court: Instruction H.

By Mr. Thompson: Of course, that is clearly contrary to what the Court has been ruling all the way through. Pickup and delivery service is not part of the contract.

By Mr. McConnell: It is right in the contract.

By Mr. Freeman: It is in the contract.

By Mr. McConnell: Right in there, right in the middle of the contract.

2119 By Mr. Thompson: All that is in there is the service existed and they should keep it up. There is nothing in there about prices.

By Mr. Freeman: Yes, there is.

By Mr. McConnell: Yes.

By the Court: I will mark it refused.

By Mr. Freeman: Do you want to see where the references are in the contract, your Honor?

By the Court: I have given the instruction on the question of the contract.

By Mr. Freeman: This is in the contract. Paragraph 9 says, "Transfer agrees to furnish and perform the following services collectively referred to as baggage pickup and delivery service within the terminal area."

Then there are a whole series of provisions with respect to that, and in the middle it says:

> "Transfer shall be entitled to receive compensation computed in accordance with the following schedule for services rendered by it,"

and then there are the Schedules D-1, 2 and 3. They go on to discuss the matter of what rate shall be received

for baggage and delivery service within the metro-
2120 politan area.

By the Court: Except the words "pickup and delivery of checked baggage" have been used in phases other than the contract provisions.

By Mr. Freeman: It should be pickup and delivery of baggage. I mean that is exactly—

By the Court: If you want to submit another one. This I have marked refused. What I am trying to say is within the purview of the contract—

By Mr. McConnell: Strike out "checked baggage".

By the Court: Within the provisions of the contract.

By Mr. McConnell: That is all right, within the provisions of the contract.

By Mr. Meserow: How is that being modified? The word "checked" is out?

By Mr. McConnell: And "within the provisions of the contract."

It will read:

"In connection with the pickup and delivery of baggage within the provisions of the contract."

Now, if it isn't within it, why, there is no harm.

By the Court: That is all right.

2125 By Mr. McConnell: That is given?

By Mr. Freeman: You are accepting this one?

By the Court: Rewrite it. I will have my girl rewrite it. This is Instruction H.

By Mr. Thompson: What is Instruction H? The changes are "pickup and delivery of baggage within the provisions of the contract"?

By Mr. McConnell: That is right.

By Mr. Meserow: There is nothing said in the contract about rate of charge that they use in this instruction. "Rate of charge."

By Mr. Freeman: I just read it to you.

By Mr. McConnell: There is rate of charge set out.

By Mr. Keating: The contract says in accordance with the tariffs.

By Mr. McConnell: That is right, and we have testimony of what the tariffs are.

By Mr. Meserow: There were two witnesses, one of theirs and one of ours, that testified the pickup and delivery of baggage was separate and distinct from the deal with the railroads. They had nothing to do with it. They didn't pay for it.

By Mr. McConnell: It is right in the contract. It says so, and you all agreed on it.

2122 By Mr. Keating: The railroads don't set the tariff.

By Mr. McConnell: They did.

By Mr. Freeman: They do set the tariffs.

By Mr. McConnell: In the contract. If it isn't within the contract, it doesn't hurt anybody, does it? If it is within the contract, we have a right to have it.

By Mr. Thompson: Well, that is submitting to the jury a question that should never be submitted to the jury.

By Mr. McConnell: The contract is in evidence.

By Mr. Thompson: The construction—

By the Court: This is pickup of baggage from—

By Mr. Meserow: From homes, your Honor, and the transfer company can charge anything they want, and the railroads can't do anything about it, and they have no control over it. They do not get the revenue.

By the Court: I will mark this refused.

By Mr. Freeman: May I have my copy back, your Honor?

By the Court: Yes.

By Mr. Freeman: Are you going to mark your own copy?

By the Court: I have marked that refused.

By Mr. Freeman: Thank you. I just want to keep your set straight.

2123 By Mr. McConnell: Instruction I has to do with the 82 mile radius where the passenger pays for the transportation, and we have had lots of testimony about it in the record and we have got the evidence in the record that it varies according to the coupon rate variation. This is part that the public pays, public as defined by your Honor, and as the coupon rate varies the charge for this service varies, so that it makes a difference between the two on the coupon rates.

By Mr. Thompson: There is no proof in this record that any passenger ever bought a through ticket within the 82 miles radius. There is no proof on the subject. It is simply an academic question.

By Mr. McConnell: There is no proof that anybody ever traveled on a railroad as far as that is concerned. They said there were a million and a half passengers going through here.

By the Court: I have heard it, but what is the 82 mile radius?

By Mr. Freeman: Mr. Padrick testified, your Honor, that if a passenger is destined to a location in the Chicago area within 82 miles of Chicago, that passenger, if he wants a transfer through Chicago, is required

2124 to pay all or a part of the transfer cost. He also testified that that transfer charge varies in accordance with the variation of the transfer.

By the Court: That is in the contract?

By Mr. McConnell: It is in the contract.

By Mr. Freeman: In the contract, their tariffs, and Mr. Padrick so testified.

By Mr. Thompson: This assertion that it is in the contract, there is nothing in the contract about it.

By Mr. Freeman: But is is undisputed and it is part—

By Mr. Thompson: Nothing is undisputed.

By Mr. Freeman: There is nothing in the contract that indicates that the coupon rate is paid by the railroads or the public. The contract doesn't say anything about it. It merely sets a price, and this is undisputed, your Honor.

By Mr. McConnell: There is no dispute on the evidence.

By Mr. Freeman: Their witness so testified.

By the Court: You say it is in the contract?

By Mr. McConnell: Sure, it is in the contract.

By Mr. Keating: No, it isn't.

By Mr. McConnell: The coupon rate is fixed in the contract.

2125 By Mr. Keating: But the 82 mile situation is not.

By Mr. Meserow: It is not in the contract.

By Mr. McConnell: They have said the coupon rate varies according to whether you are in the 82 miles.

By the Court: I will mark it "Refused." Instruction I refused.

By Mr. McConnell: Instruction J, coupon rates.

By the Court: I can see no objection to it.

By Mr. Meserow: Why comparative?

"Consider the coupon rate proposed by Parmelee and the coupon rate charged by the Railroad Transfer."

Strike out the words "comparative and actual."

By Mr. McConnell: All right.

By Mr. Meserow: Now, your Honor, there were two bids made by Parmelee in their coupon rate, one of May 19, and a subsequent one. The one on May 19 was a much higher one with an accelerating clause than the later one where it was withdrawn.

By Mr. McConnell: That is a question for the jury as to what they were. The evidence is all before the jury.

By Mr. Thompson: Of course, this can have nothing to do with it in the light of the instruction that if the
2126 public pays no part of this, in other words if the railroad pays all of it out of their own funds, and there is no evidence of any increase to the cost to the public, then of course, this is inconsistent with that.

By the Court: That is correct. Refused.

By Mr. Freeman: Wouldn't it be simpler to just direct a verdict, your Honor?

By the Court: Now Instruction K.

"The Court instructs the jury on the question of public injury that you may consider, among other things, comparative services provided by Parmelee."

By Mr. Thompson: We get back to that pickup and delivery of baggage again.

By Mr. McConnell: The question is comparative service of the two companies; what were they doing.

By Mr. Thompson: Interstation transfer is the only issue here.

By the Court: Mark it "Refused."

By Mr. McConnell: How about leaving out pickup and delivery of baggage? Would you give it in connection with interstation transfer of passengers? That is within the issue.

2127 By Mr. Thompson: Put a period after "baggage," and the "pickup and delivery of baggage" is stricken off, and then I think it is what your Honor has said a good many times.

By the Court: Yes, that is all right.

By Mr. Freeman: Isn't services specifically covered by the contract, services of pickup and delivery of baggage specifically in there in several sub-paragraphs of

Paragraph 9? There can be no doubt about it. They are quarreling about the fact of rates being fixed by the contract. This only deals with comparative service.

By the Court: "The Court instructs the jury on the question of public injury you may consider, among other things, comparative services provided by Parmelee and Railroad Transfer in connection with the interstation transfer of passengers and baggage.'

Do you want to correct your copy and give it to me, and I will give it?

By Mr. Freeman: Thank you. We will do so.

By the Court: I will have my girl type it.

The next one is Instruction L. That is refused.

By Mr. McConnell: Exception to the ruling.

2128 By the Court: All right.

Instruction M, definitely refused.

By Mr. McConnell: Exception to the ruling.

By the Court: All right.

Instruction N, refused.

By Mr. McConnell: Exception.

By the Court: Instruction O, that is refused.

By Mr. McConnell: Exception.

By the Court: Instruction P, refused.

By Mr. McConnell: Exception.

By the Court: Instruction Q, refused.

By Mr. McConnell: Exception.

By the Court: Instruction R, refused.

By Mr. McConnell: Exception.

By the Court: Instruction S.

By Mr. Freeman: Your Honor will appreciate this is exactly what you said at the beginning with respect to per se violations of price fixing, which your Honor himself said, in R.

By the Court: It is not here per se.

By Mr. Freeman: You said if there was any agreement to fix prices that you would understand that as a violation of the anti-trust laws. This points out that there are such agreements in this contract.

2129 By the Court: I said what?

By Mr. Freeman: I understood you to say, and the record of course would have to substantiate it, that if there were any price fixing involved in this situation, that would be a per se violation of the anti-trust laws, and there is.

By the Court: I never said that and wouldn't say it and don't agree with it.

By Mr. Freeman: You don't think that that would constitute—

By Mr. McConnell: Just a minute. Exception to the ruling.

By Mr. Thompson: This isn't price fixing, of course, in any sense.

By Mr. McConnell: All right. That is what you say.

By the Court: Instruction S is refused.

By Mr. McConnell: Exception.

By the Court: Instruction T refused.

By Mr. McConnell: Exception.

By Mr. Thompson: We don't have a copy of T.

By Mr. Freeman: We will give you a copy of it.

By Mr. Thompson: Let's see what it is.

By Mr. Freeman: You don't need it. It has been refused.

2130 By the Court: The last one, "U" is refused.

By Mr. McConnell: Exception.

One more thing, the rules say we have to state our exceptions at the time the instructions are given unless we stipulate otherwise.

I am asking the Judge if he can let this show in the

record as our exception to the giving or the refusal at the time?

By the Court: Let the record show it is by order of Court and stipulation of the parties that the exceptions now taken to the instructions both given and refused shall stand as the same exceptions at the conclusion of the Court giving those instructions to the jury without repetition.

By Mr. Thompson: All right.

By Mr. McConnell: May we have a little recess now so I can get my things together to argue this?

By the Court: Yes.

By Mr. Thompson: We will keep on going until 1:00 o'clock or so?

By the Court: Yes, we will keep on going.

By Mr. Thompson: Until they get through with their opening, if they can?

By the Court: All right.

2131 (Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, outside the presence and hearing of the jury:)

By Mr. Thompson: I just have one thing to say on one of these instructions.

By the Court: All right.

By Mr. Thompson: Of course, this came quickly and I only had a chance to look at it when it first came in here. This is Instruction "K" that was offered by the plaintiff:

> "The Court instructs the jury that on the question of public injury you may consider, among other things, the comparative services provided by Parmelee and the Railroad Transfer Service, Inc. in connection with interstation transfer of passengers and baggage and the pickup and delivery of baggage."

By the Court: I changed that, and I gave you a corrected copy.

By Mr. Thompson: That is what I am bothered about. I am inclined to think it ought to be the way they offered it, because this has nothing to do with charges or
2132 anything. It is comparative services, and I would feel happier, I think, if "K" was given as it was offered.

By the Court: Give me the original and withdraw your objection, and destroy, please, the copy that I gave you.

By Mr. Thompson: Very well, your Honor.

By Mr. Freeman: Your Honor has a copy?

By the Court: I have it, and if you will give me a second I will have the original rewritten.

By Mr. Thompson: Just the way it was, your Honor.

By the Court: Very well.

The Proposed Instructions Tendered By The Parties And Which Were Refused By The Court Are As Follows:

2133 (1)

"Before you were accepted and sworn to act as jurors in this case, you were examined by both plaintiff and defendants as to your competency and qualifications. Your answers showed you were competent and qualified to act as jurors in this case and the parties to this case accepted you as jurors on the faith of your answers. The answers you then made to questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy are as binding on you now as they were then, and should so remain until you are finally discharged from further consideration of the case. It would be improper for you to disregard those answers that rendered you competent jurors. *(Refused)*

2134 (d)

The Court instructs you that if you believe a witness has testified falsely as to a material issue of fact, you are free to disregard any and all of the testimony of such witness. *(Refused)*

2135 (e)

The Courts instructs the jury that plaintiff need not prove its case beyond a reasonable doubt, but only by a preponderance of the evidence. *(Refused)*

2136 (f)

You are also instructed that the plaintiff must establish its case by a preponderance of the evidence. This preponderance, however, is not necessarily determined by the number of witnesses testifying to a particular fact or state of facts. *(Refused)*

2137 (b)

The Court instructs the jury that on the question of public injury you may consider, among other things, the comparative services and rate of charge therefor performed by Parmelee and Railroad Transfer Service, Inc., in connection with the pickup and delivery of checked baggage. *(Refused)*

2138 (i)

The Court instructs the jury that on the question of public injury you may consider, among other things, the coupon rate charged passengers using transfer service between terminals in Chicago whose trip terminates within an 82-mile radius of Chicago. *(Refused)*

2139

(j)

The Court instructs the jury that on the question of public injury you may consider the coupon rates proposed by Parmelee in its bids and the coupon rates charged by Railroad Transfer Service. (*Refused*)

2140

(l)

The Court instructs the jury that the "public" includes not only railway passengers using the transfer service, but the public at large, including members of the public holding stock in the 21 railroads comprising the Chicago Terminal Lines group. (*Refused*)

2141

(m)

The Court instructs the jury that a combination, conspiracy or agreement to eliminate a competitor equipped to compete from a business involving a substantial segment of interstate commerce is an illegal restraint of trade and is of itself injurious to the public interest. (*Refused*)

2142

(n)

The Court instructs the jury that if you find that the contemplated purpose, tendency or inherent nature of the award of the transfer business to Railroad Transfer Service, Inc., was injurious to the public, you need not find actual public injury. (*Refused*)

2143

(o)

The Court instructs the jury that in determining whether public injury occurred, the jury may consider the fact that the contract with Railroad Transfer Service, Inc. precluded competition for the transfer business for a period of five years. (*Refused*)

2144 (p)

The Court instructs the jury that it is no defense to the issue of public injury that for business reasons it was necessary or advantageous for Railroad Transfer Service, Inc. to have a five-year exclusive contract with the railroads. (*Refused*)

2145 (q)

The Court instructs the jury that any asserted economic advantage to any of the defendants in having a transfer contract for a period of five years should be disregarded in your determination as to whether public injury occurred. (*Refused*)

2146 (r)

The Court instructs the jury that if you find that there was an agreement between the defendant railroads and defendant Railroad Transfer Service, Inc. as to the amount of charge to be made to railroad passengers for transporting hand baggage to parcel rooms of railroad terminals in Chicago and for transporting remains between terminals, then such agreement would as a matter of law constitute injury to the public. (*Refused*)

2147 (s)

The Court instructs the jury that if you find that there was an agreement between the defendant railroads and defendant Railroad Transfer Service, Inc. as to the amount of charge to be made for transporting hand baggage to parcel rooms of railroad terminals and for transporting remains between terminals, it makes no difference whether such rates of charge are reasonable or unreasonable since such agreement is unlawful by itself and constitutes injury to the public. (*Refused*)

2148 (t)

The Court instructs the jury that if you find that there was an agreement between the defendant railroads and defendant Railroad Transfer Service, Inc. as to the amount of charge to be made for the pick-up and delivery of baggage, such agreement would as a matter of law constitute injury to the public. (*Refused*)

2149 (u)

The Court instructs the jury that any attempt to fix prices or rates of charge in connection with the interstation transfer of baggage and pick-up and delivery of baggage is unlawful and constitutes injury to the public, and it makes no difference whether the fixed prices are minimum or maximum prices, or reasonable or unreasonable. (*Refused*)

2150 (Whereupon a short recess was taken, after which the following further proceedings were had herein, in the presence and hearing of the jury:)

By the Court: All right, bring out the jury.
Good morning, ladies and gentlemen.
All right, Mr. McConnell.

And thereupon Mr. Thomas C. McConnell Addressed The Court And Jury In Argument On Behalf Of The Plaintiff As Follows:

By Mr. McConnell: May it please the Court, opposing counsel and ladies and gentlemen of the jury: It is now my province to address you on the issue which is being submitted to you by the Court. This has been sort of a difficult situation for you people, as I realize.

You spent a lot of your time in the other room, and I hope that you will bear with us all. We have tried to do the best we can under the circumstances.

If there is anything I have done or anything I have said in the course of the proceedings which aggravated you in any way, take it out on somebody else—me—
2151 but not my client, please, and I think I speak for counsel on the other side, that I think we all appreciate the courteous attention and courteous hearing you have given us.

I said, when I started this case, that it was difficult for me to make an opening statement. If it was difficult then, it is doubly difficult now to address you on the issue here without any background for you of what the case is about.

I think I can say this, that I have brought—I didn't bring it, but I am employed by the plaintiff in this case, and the suit was brought under Sections 1 and 2 of the Sherman Act and the concomitant sections of the Clayton Act under the anti-trust laws, and while you people are only hearing a portion of the case, it is still an anti-trust law, and it always will be, and it may become a very historic case before we get through with it.

I can't minimize or undertake the importance of the issue that is before you people. I am not exactly a novice in this anti-trust litigation or in the trial of lawsuits, and my opponent has been at it ten years longer than I, and we have been around here too long, probably, but I
2152 can't recall, and I certainly don't think that any jury is going to sit on a case with more public interest, more over-all interest and more historic interest before we get through with it than this one.

These anti-trust laws have been on the books seventy years, and they were enacted by Congress, and I say this in no critical way at all, just as a statement of fact, that this, as far as I know, and I think I am as well familiar with this practice of the law as anyone, that as far as I

know an issue of this kind has never been submitted to a jury before in an anti-trust case with the limitations which are imposed here.

2153 That is neither here nor there, and I want to get to the issue which is before you.

I make those preliminary remarks simply because I feel we have a case of great public moment, of great public significance, and of very serious import in the administration of justice in the courts of this land.

I asked for a jury trial because I believe in juries and believe in the ability of juries to get at the facts, and we demanded a jury trial, and the Court will instruct you at the end of the case that you are the sole triers of the facts in this case.

The judge is paramount in his rulings of the law, and you will be instructed to take your instructions on the law from him, but within the province of the facts of what is before you, this jury and all American juries are supreme. It is to the glory of our law that that is so.

The issue here, as it has been defined and will be defined in the instructions, is quite narrow. As you will recall the direct examination of my witnesses in my case was confined to that narrow issue, and then we came to the

2154 defense in this case, and much to my surprise and the surprise of my colleagues, the defense that was prosented was the defense to the conspiracy issues in this case, so that you are in the unique position here of having heard none of the plaintiff's issue on the conspiracy issue but having heard the defense to those issues.

I sat quietly here and didn't say anything, because I have taken the position that those issues were properly before you, and there was no objection made, and the evidence went in, but the evidence is now in, and I have a right to discuss it with you, not on the issue of conspiracy,

but on the issue of the credibility of those witnesses of whether or not what they were telling you was the truth or whether or not the defense which was presented here was a false defense.

2155 If it was a false defense, which I contended that it was, something created after the event, as an afterthought, that goes to the credibility of all of those witnesses on the issue which is here before you this morning.

I want to go back to the beginning of this thing. We have a situation here where the Parmelee company, an institution here in Chicago, known all over the world, a million and a half people went through this location year after year after year, traveling from one station to the other, and using the Parmelee services. It takes no great flight of the imagination to see that that was an institution, built and created over years and years and years of service, which the railroads, and every document in this record, have said was highly satisfactory and the performance pleasing to them in every respect material in this case.

I am going to get to that evidence and read those documents again. Some of them you have heard.

Talk about it being poor service, I say, is an afterthought; not a position taken at the time when these discussions were going on. Something created, some-

2156 thing built up, something which is contradicted by all the evidence in this case.

I want to state their position at the outset, and then we will attack it with the documents and the evidence which you have heard.

An effort was made here before you people to show that this contract was taken away from the Parmelee people for some business reason. There were four things stated. Perhaps the best way to recall it to your mind is

to recall to your mind Mr. Whittington on the witness stand, the belligerent gentleman from the Baltimore and Ohio Railroad, the man who did all the talking, they said, in the May 19th meeting.

Mr. Whittington stated the defense to the conspiracy charges in this case:

No. 1, the reason they changed from Parmelee was because they couldn't get a profit and loss statement. There was no obligation on our client to ever give one. Every witness agreed to that. There was no contractual agreement about it at all, but they couldn't get it, so that was No. 1.

No. 2, labor difficulties. It had a strike back in 1950, and they were threatened with a strike in subsequent years. That was the second thing.

No. 3, air conditioning equipment.

2157 No. 4, he thought that there would be a better continuity of service over the years, when the evidence is that we were never given anything in the way of a contract in the whole time that we were there except on the basis of what Mr. Padrick said from the witness stand, he said what you might even call a day to day basis.

Those contentions were made by Mr. Whittington from the witness stand here in this court. But you people will recall that he was brought into this, brought into this discussion after Mr. Nelson of the Baltimore and Ohio Railroad had taken the position that there was not enough difference between bids to justify taking this business away from the Parmelee company.

There were other letters written which I am going to advert to in the course of my argument, but I am stating this at the outset to get the real issue before you as to the credibility of these witnesses.

When Mr. Whittington was commissioned by his superiors to bring Mr. Simpson, the president of the Baltimore and Ohio, up to date on what the status of the negotiations were, and I asked him on the witness
2158 stand, "You were to bring before him everything material to this case?" and he said, "Yes." When he wrote his report, which I am going to advert to and read portions of in my argument, he didn't make one single reference to any of these things which he now says were determinative in taking this contract away—

By the Court: May I interrupt you one second, please? I have a long distance call.

By Mr. McConnell: Could I finish the sentence?

What I was going to finish with was determinative in taking this contract away from the Parmelee company and giving it to the Keeshin company.

By the Court: Thank you very much. Go ahead.

2159 By Mr. McConnell: I want to read from Plaintiff's Exhibit 7, which was a memorandum under date of February 15, 1955, from J. L. Sloan to Mr. R. T. Anderson of the Santa Fe Railroad. Reading the first paragraph of that letter:

> "At meeting of Chicago Terminal Lines February 1st report of committee studying transfer arrangements at Chicago was submitted. Chicago Terminal Lines were advised that we had received one bid for transfer of passengers and baggage from Keeshin at approximately the same rate Parmelee is now charging, and one bid for transfer of baggage only. Chairman Padrick advised the lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00, including baggage, was submitted by some transfer company."

Now I asked Padrick if that was the view of the committee, and he said they were all there when he made the recommendation and nobody objected, nobody said
2160 anything to the contrary, and I could assume that they did agree.

They were trying to get a lower rate on this coupon, and that is all they were trying to do. There isn't the slightest question about it on the evidence in this case that they met together in July, I believe it was, of 1954, to get some competitors to keep the Parmelee coupon rate down.

You will recall that I went through these rate increases, and so far as this record shows in 102 years, Parmelee had three rate increases, and everybody that took the witness stand that was examined on it admitted that the cost of doing business and the price of labor and the price of everything has been going up; and the rate increases were trivial compared with the problem that was faced.

I asked all these witnesses whether all these people, and they contacted some eight, nine or ten of them, who could possibly do this same job, whether or not they ever got a lower rate, and they didn't get a lower rate from any single one of them except the Willett Company. The Willett Company, apparently, according to some of the
2161 correspondence here, misunderstood what they were doing and withdrew their bid.

Keeshin's bid wasn't any lower at any time, and his bid never varied from the time it was submitted December 15 down to the end of the matter, except for some changes in putting ceilings on, and some of the escalator charges in his rate, which was based on a one-cent increase in coupon for every five-cent increase in wages.

It was a rate negotiation with competition brought in. There is no question about our having competitors. Here

they went out and got ten of them to submit different bids.

Here is the committee, the men the railroads picked out with knowledge of this thing, saying, after they had Keeshin's bid, even before we put in a bid, taking our old scale, that unless there was a reduction in the coupon rate to $1.00 or $1.10 there was no point in making a change.

Why would they make such a recommendation? Men familiar with the industry; men familiar with what was going on; men familiar with the nature of the transfer business.

They didn't want to injure the public. Why? Be-
2162 cause the public was their customers. Unless they could get a substantial decrease in the rate, they didn't want to disturb relationships, which I am going to point out and show to you, they said time and time again were satisfactory.

They knew, just like any ordinary intelligent person must know, that to disturb an operation that had been in existence that long had to result in difficulties, in injury to the traveling public. It was inherent. It had to result. It couldn't be otherwise.

All right, Mr. Whittington had to admit that there wasn't one single, solitary one of the things that he said he had in his mind later on in the negotiations which was submitted to Mr. Simpson, who was going to make the decision. All these important things. Why weren't they?

There is only one possible explanation, because at that time they were not controlling factors, and they were not being considered seriously, and they were not the things which were determining why this business should go from one company to another. It wasn't that. It was something else. When they try to tell us it is this, why give a
2163 phony reason? Why? Because they can't give the real reason, that is why. That is this whole lawsuit.

That is their defense to a conspiracy case: Afterthought, dreamed up, not supported by the evidence.

2164 Now when you get at issues of truth, you look to see whether the things which are being said to you people are corroborated by the physical facts, corroborated by the things that are said, not later in a lawsuit where you are trying to sustain a position, not later when you are trying to cover up a position or deny a fact.

What do you say at the time? What were they talking about at the time?

They were talking about getting a lower rate, and that is all they were talking about, provided the service was comparable. The committee working on the problem did not feel that the change should be made in contractor "unless there is a substantial reduction in the price."

That is the letter from Anderson to Duffy, Plaintiff's Exhibit 6, under date of January 7, 1955.

These men were dealing with it then as a railroad problem, as a business problem, and using their best brains and ability on it. Somebody later changed it as a matter of policy, and I will get to that.

I read to you from a letter from Anderson to Duffy of the Atchison, Topeka, Santa Fe Railroad under

2165 date of January 7, 1955. At that time—well, I will read it to you:

"A committee consisting of the line in each terminal paying largest amount to Parmelee was appointed to contact other transfer companies in Chicago capable of performing the operation to ascertain if a lower price could be secured for transferring passengers and baggage between stations in Chicago. A memorandum was prepared outlining the transfer problem and presented to each of the companies contacted, and an interview was arranged with the companies interested to answer their questions and progress the matter.

"We have received a bid from Mr. J. L. Keeshin for transfer of passengers and baggage at a charge of $1.20 per coupon with an escalator clause, and the bid also includes proposal that station forces load and unload trailers, which would be unloading with our own men and would be an additional expense for the carriers.

"A bid was received from the Landon Company
2166 for the transfer of checked baggage only. The Railway Express Agency advised that they would only be interested in the handling of baggage, and this they would do on a 15 per cent plus basis."

And after that, they said:

"The committee working on the problem did not feel that a change should be made in the contractor unless there is a substantial reduction in price."

Keeshin's price was $1.20, two cents under the then prevailing Parmelee price. As you recall, Parmelee came down in their price to meet this price of $1.20, then there were increased stages, and then there was an absolute ceiling put on the Parmelee proposal of $1.25.

There was no such ceiling put on the Keeshin proposal, and it ended up that they paid, and they paid, $1.27 during the last year to the Keeshin company, two cents more than could ever be charged by Parmelee under their proposal.

That is the negotiation that had to do with getting a new carrier at a lower rate, and they are trying to tell
you people that the reason that change was made
2167 was just an ordinary business reason.

Do you remember Gurley on the witness stand? Gurley testified to those same four things. Those were the things. Then he didn't know the rates. He didn't know the proposals. Somebody had written it up for him.

He finally remembered that his own organization, Mr. Sloan of his own organization, had recommended after the May 19th meeting that they continue with Parmelee. His own organization, his own memorandums, everything he had before him contradicted him. He couldn't find anywhere any of the things he was mentioning—not a one of them. Not a one of them.

What is an afterthought? It is something thought up; it is something dreamed up to cover a situation after the event.

It isn't found anywhere in these papers. It isn't found anywhere in these records. It isn't found anywhere in the conversations even.

Every railroad that we had, that they put witnesses on, their witnesses just completely collapsed on that issue. They had to. They couldn't do anything else. It wasn't a fact.

2168 You can't fabricate evidence of that kind and make it stand up in a court over cross examination. You can't do it. It just can't be done, and it wasn't done in this case to satisfy you, I am sure.

I am coming back to some of these admissions that were made on that situation.

Mr. Padrick sat in on all the committee meetings, chairman of the twenty-one railroads which constituted the Terminal Lines. He was the chief negotiator. He was the man who knew everything about this situation. He was present.

You will recall he tried to tell us of the May 19th meeting. The concensus of opinion at the May 19th meeting was that they should give this business to Keeshin with no qualifications about it.

There was nothing doubtful about his testimony. He said it.

Mr. Whittington, who was there, who is also their witness, he gets on the stand, and he gets there, and there was nothing that even remotely resembled a consensus of opinion.

There was no vote, no discussion of how they were going to vote, and there was complete conflict be-
2169 tween those witnesses on a very material point, most material because he was trying to tell you that it was settled there as a business matter on May 19th, and then we confronted him with the letters of three members of that committee of six where they had written their people saying that they were going to recommend Parmelee.

They said it in writing, so they didn't agree at the May 19th meeting on any business reasons to give this to Keeshin and take it away from Parmelee. They didn't. They couldn't have in the face of that correspondence written at the time, as it couldn't have happened and it didn't happen.

Witnesses get on here to testify to a story like that intended to cover like a blanket why they took his away. Why did they bring a story like that into court? It can't be corroborated. It is rebutted by the record of the times.

Gurley said, and I am quoting from transcript Page 456, that he said—when the final roundup came, to vote for Keeshin as a matter of policy.

What in the world kind of policy could be involved in this situation if it was a business proposition? Where is the policy?

2170 There is another element that is in it, which we have gone into, that does involve policy, but not the difference in coupon rate. Where is the policy in that?

Here is a railroad president of an important railroad coming in here with a story of that kind, which you know

can't be true if you analyze this testimony and analyze what the background of it was and what the situation was. It just can't be true.

2171 Why is that important? Why is it to so vital and important on the issue that is before you? Because in this whole matter of equipment and service, and so forth, that their testimony on that is an afterthought to explain why and to avoid the real reason for the transfer of this business from one company to another, if it is all a fabrication you can disregard all this testimony.

I am going to show it doesn't amount to anything anyway, but as to what it does amount to, I would say, and say most respectfully, that you can disregard it all.

I asked Mr. Gurley about the proposals, and he said, "I didn't have the dollar and cent graduated scale coupons in mind when I was dealing with it."

He was making the decision and didn't even have them in mind, and here we have them in mind, and here we have all this big committee formed with the proposals, and somebody said, "cricket", that it wasn't "cricket." That is an English expression, and I think it means fair play, and I don't think you are getting much fair play if the person who is deciding it is deciding it as a matter of policy and doesn't even know what the rates are.

2172 Maybe that is some explanation of what is the matter with the railroads. Here is a railroad president telling you he is deciding it without even knowing what the rates are, who doesn't even care. He didn't know the coupon rate.

Here is what his own people had told him, and he didn't care about this, and I am quoting:

> "We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin because we have assurances of a maximum coupon rate in the fourth and fifth years and, in addi-

tion, we will avoid the possibility of labor trouble in connection with the operation by a new company with a different union."

How about that for a switch?

Here is their own organization who had lived with Parmelee for years and years and years, and who wanted to keep the contract because they have satisfactory labor relations now, and they don't know whether they are going to have them with a new union.

That is the recommendation, and this man Gurley says the labor situation, possibly a better labor situation
2173 with Keeshin was one of the things in his mind, not in any memorandum, not in any suggestion.

There is no showing he knew one solitary single thing about it until he got here to testify in this case.

What was the labor situation? Parmelee had an A.F. of L. union, and they had a Brotherhood Railway union, and Keeshin had an outlaw union.

He had an independent union. That is what they are talking about as a possibility of labor trouble.

When an independent union comes in and takes over and takes the people that were there, and in the union, of course, the union is going to object. Why wouldn't they object?

That possibility was certainly in anybody's mind who knew the situation.

We have in this case what I find in all of these kinds of cases where you have big corporations.

2174 You have the fellow down at the bottom who knows all about the business and knows why things should be done and makes recommendations, and you have a fellow up at the top that doesn't know anything about it at all, and on some policy basis he makes a decision, but I have never seen it proved like this before, where

a president comes right out and says, "I got all these recommendations in favor of Parmelee, and I don't even know what the rates are, and I don't know this or that about it. I just didn't know anything about it, but I decided, as a matter of policy, we would give it to Keeshin."

If you can believe that—he did it as a matter of policy, all right.

I cross-examined Nelson on how the contract was working, Nelson of the Baltimore and Ohio, and he testified in the transcript at Page 713 that it was his opinion that the Keeshin proposal was not sufficient, a not-sufficient decrease from the present rate to warrant any change from Parmelee.

That was before Parmelee had even put in a bid. That was when Parmelee had $1.22, and then he further testified as follows:

"Q. Is it true that the Baltimore and Ohio at
2175 present is actually paying Keeshin $1.27 for the transfer service?

"A. It is.

"Q. And that last year you paid Keeshin $1.25 for the transfer service?

"A. That is right

"Q. And in both instances those rates were in excess of the maximum ceilings in the Parmelee proposal for the two years involved, is that right?

"A. I believe so."

Getting back to Mr. Whittington, he was the hatchet man at the May 19 meeting. He was the fellow telling them what was what and telling them this and that and the other things.

Coleman, his associate and his assistant, writes him to bring him up to date so he would know what is going

on, and he writes him under date of January 7, 1955, Plaintiff's Exhibit No. 34, which is in evidence as follows:

"As previously informed you, the Chicago Terminal Lines only last year appointed a subcommittee to make a survey of the Chicago transfer situation,
2176 particularly from an economic rather than a service standpoint, as the latter has been satisfactory in its handling by the Parmelee Transportation Company."

That is the Baltimore and Ohio. That is the fellow we had in here the other day working part time inside the station and the rest of the time two or three blocks away out in the yards telling us all about what was going on back there in 1955. That is the Baltimore and Ohio. "The service was satisfactory," they said, and they ought to know. They had been dealing with it long enough.

They had had enough time to find out about complaints or anything else, and speaking of complaints over a period of 102 years of service we had eight or nine complaints produced here for your edification.

We have dealt with the Baltimore and Ohio, and Mr. Whittington takes things in his own hands over Coleman's recommendation, over Nelson's recommendation.
2177 He is instructed by Mr. Simpson, and in the advice to Mr. Simpson there was not a single word, as I say, about any of these things he is talking about now, but Mr. Simpson made the decision, apparently, and Mr. Whittington goes on and appears at that May 19 meeting.

He never appeared at meetings before. Some policy decision had come up which required the higher echelon people at the meeting, apparently.

We have talked about the Santa Fe. Those two railroads were on this committee, and their people had written recommending that they vote for Parmelee, and the

other western railroad was the Illinois Central. They changed and switched their vote.

Every single document in this case, and I challenge counsel to find a one in the entire course of these negotiations which doesn't say specifically, unequivocally in language no one can misunderstand that there was nothing wrong with the Parmelee service, with their equipment, with their service, with what they were doing for the railroads.

The trouble was that the Parmelee company was making requests for rate increases in the face of higher
2178 costs all along the line.

In that connection I want to call your attention back to what I think is very significant. The Railway Express Agency, which is an agency owned by these railroads themselves, was contacted to see whether they could do better on the rate. No, and the only way they would touch the business was on a cost plus 15 per cent basis, a guaranteed profit of 15 per cent, and somebody here on the witness stand was complaining about Parmelee because they wanted to figure their rates on a 10 per cent on their invested capital basis, and this man, their own agency, wanted 15 per cent profit.

2179 They wouldn't take the business.

I want to refer to something else here. There were differences in service. There were admitted differences in the service. There were differences in service that nobody can deny and nobody has denied. We have all this big buildup about air conditioning. Let me advert to that for a moment.

We put a witness on the stand who went out and checked the air conditioning on the Keeshin vehicles during hot weather, for two years. He made notes, made a record. He came in here and testified about it. He said the windows were open.

I asked their witnesses if the air conditioning was working, if the windows had to be closed, and they said yes. This witness checked and found the windows open on the hot days during the summer. It only means one thing. The air conditioning wasn't working.

Did you ever hear any denial of that? Did anybody deny it? I never heard any witness get on the stand and deny it.

All you can get from that is that all during the hot weather, the windows were open, which means that the air conditioning wasn't working. That is a big thing, 2180 great big thing, all blown up here to account for all sorts of things, the transfer of a contract from a person that had it for 102 years on the basis of air conditioning they don't use, according to this record.

We showed you that they had delays. Of course, they had delays. You can't operate a business like this without troubles and delays. But here is a railroad saying over 102 years, whatever they did, that their services were satisfactory and there were no issues on that in the controversies back and forth over who was to get this business.

I have shown you the rate was higher. That is no change, no reason to change. They were going to pay more money to Keeshin.

He had never been in the business before. Never been in it. He never had any experience in it. Absolutely a brand new thing for him, and they were going to experiment with the public on it, and cut out one for the other. Obviously not for the reason you have heard in this courtroom.

When I see witnesses of the caliber of the higher echelon like Mr. Gurley, who come here with a story

like that, and then underlings come in who have
2181 been interviewed by their superiors as to testimony, how much credence are you going to give to that in this courtroom?

That is the issue here in this case, credibility. Credibility—that is the issue before you on this situation.

Is this a good place to break, your Honor?

By the Court: Ten minutes.

(Thereupon the following proceedings were had out of the presence and hearing of the jury:)

By the Court: It has been suggested that we might go out to lunch now and then resume and go straight through.

By Mr. Thompson: No. That makes the whole afternoon and wears them dead. Let's finish the first argument, and then go to lunch. I am certainly opposed to having a five-hour run.

By the Court: All right. We will go on until one o'clock, then.

(Thereupon a short recess was had.)

By the Court: All right. Bring out the jury.

2182 (Whereupon in the presence and hearing of the jury the following proceedings were had:)

By Mr. McConnell: If the Court please, ladies and gentlemen of the jury, I want to read to you this letter of May 23, 1955, which is in evidence here as Plaintiff's Exhibit 9, because it deals with a number of points which have been at issue in this case and settles them, it seems to me.

This is a memorandum from R. T. Anderson to Mr. Duffy of the Santa Fe Railroad. He says:

"Supplementing our memorandum of March 18 and previous advices about progress of committee of Chicago Terminal Lines studying the transfer of passengers and baggage in Chicago, the committee met Thursday morning with Mr. J. L. Keeshin and Thursday afternoon with Mr. M. Markin to review their proposals.

"We understand that Mr. Keeshin has appealed to the executives of the B&O, Pennsylvania, C&NW, and possibly other lines for favorable consideration of his bid."

2183 Now think about that for a moment. We have got a committee here, and it is composed of six railroads, and the six railroads put representatives on the committee, and after the May 19 meeting, the meeting at which Mr. Padrick says the concensus was that everybody was in favor of Keeshin, Keeshin appealed to the presidents of the railroads whose representatives were on that committee. The B&O, the Pennsylvania, and the Chicago and North Western—three of the railroads that are on that committee. He goes outside the committee, over the heads of the committee, and appeals to the presidents of the railroads.

Cricket. Good old English game of cricket.

"Mr. Keeshin passed a statement around at the meeting showing the amount of freight revenue billed through the truck rail terminal in Chicago which he operates. The Pennsylvania received the largest revenue, over a million dollars. Other carriers in eastern territory and carriers operating between Chicago and St. Paul received large amounts. The Santa Fe re-

2184 ceived approximately $3,000 revenue."

I am a good customer of yours; I am giving you business in freight. That is what he wants considered in

this committee when the proposal was whether or not the railroads should get a lower rate.

2185 "Cricket."

He goes on as follows:

"Mr. Keeshin proposes to furnish air conditioned, radio-phone-controlled passenger station wagons supplemented with some large equipment for the transfer of passengers and 20-foot trailers on a two an hour dispatch for the transfer of baggage. Coupon rate for the transfer of passengers and baggage will be $1.20 for the first year, $1.22 for the second year, $1.23 for the third year, the coupon rate for the fourth and fifth years to be increased one cent for each three cents of wage increase. If Mr. Keeshin is a successful bidder, the drivers would come under a different union and would have to pass a physical examination. Mr. Keeshin is positive there will be no union difficulties. We have operated with Parmelee without a contract."

Can you remember any discussion here of whether there was or there wasn't a contract? It is a big issue on that.

2186 "We have operated with Parmelee with a contract."

This is the man writing about it who knows about it, a defendant in the lawsuit.

". . . but it is felt in view of expense to be incurred in acquiring new equipment, the operation should be covered by contract after expiration of present letter agreement of June 30, 1955. Mr. Markin now submits a proposal of $1.20 for transfer of an increase of one cent in the coupon rate for each three cents of wage increase, with a maximum of five passengers and baggage effective July 1, 1955 with

cents' increase over the five-year contract and a maximum coupon rate in each year as follows: July 1, 1956, $1.22—July 1, 1957, $1.23—July 1, 1958, $1.24—July 1, 1959 through June 30, 1960, $1.25. Mr. Markin states he will spend $500,000 in the next 18 or 24 months if he is successful bidder to replace trucks with a new type of vehicle and to add 30 new 12-passenger limousines to his present fleet of 20
2187 which will enable the retirement of the older 7-passenger limousines. The other Parmelee service will be continued unchanged, baggage and transfer being handled on a two a day basis, which has been satisfactory."

You remember all of this talk about two and four time transfer? Here is their own man who says, "Two a day is satisfactory."

He says Markin is going to spend $500,000, and that was in the contract. That was in the proposed contract.

2188 I took their witness Bayr over all the equipment they had out there, all this new equipment that came in, this great big buildup about the equipment, and I had him—he bought it, and he knew what the prices were. He gave that, and what do you think it totaled? It was $166,000.

Markin was going, was contracting to spend $500,000. It isn't a comparison between what Parmelee had before these offers came in. It is a comparison between what Parmelee was proposing to do and what Keeshin did, and it is a comparison between $166,000 of equipment with $500,000 of equipment, plus the cost of the trailers, which I didn't get from him, and which they had used and probably depreciated down to zero.

There is something that anybody can put down on paper and compare. Five hundred thousand dollars of equipment against $166,000.

The equipment has something to do with it. It isn't the old equipment at the time you are talking about that they have a picture in evidence here taken on some dark Sunday with no traffic or anything else, where it looked like it had just come out of the Ark, and you will look at that picture you will see the taxicab and compare
2189 that with all their trucks in their garage and it would look pretty bad, but that is comparing apples and pears.

That isn't what we are comparing, and I don't concede the taxicab, what they call the taxicab, was that bad either. They thought it was satisfactory all during the years, and they were trying to please the public, at least they tell you they were—I mean the railroads.

We were proposing to put $500,000 in there. Here is a man who has been in the railroad business all of his life, and his president said he was competent and that he was a good man. Continuing:

> "There will be a final meeting of the committee on June 3rd to submit our recommendation to all Chicago Terminal Lines. We propose to recommend the continuance of our arrangement with Parmelee because of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal
2190 submitted by Mr. Keeshin."

I am not saying that. They are saying that. The witness of their company says it, and it is their document out of their records. It is not me, but they are saying it.

Everything I have gotten in this lawsuit down to date I have had to claw out of these people on cross examination, words out of their own mouths all the way through here.

I am not talking about witnesses we put on. I am talking about their evidence and their witnesses and their documents.

We are on the outside looking in here, and we have to do the best we can in trying to break through what has been set up here as a veil over the true facts in the situation, and we have had to fight and fight and fight to get them.

2191 We have them, and they come right out from their own documents, and they say on May 19 that this is a superior proposal, and I asked these witnesses, and I think I asked them all, "Did anything in the way of a proposal happen after the May 19 meeting?"

The only thing that happened was something which improved the Parmelee bid. This is written on the May 19 meeting. It is perfectly obvious from this that on the merits, on the people who knew, on the personnel who were dealing first hand with the problem, on the operating level, who could see and had seen the operation, that they were satisfied with Parmelee.

They had gotten their lower rate, and they were satisfied, and they were recommending that they continue. On the merits we had won on May 19.

We have given you other recommendations, and they have been read into evidence. There is the Baltimore and Ohio, the Santa Fe, and Mr. Padrick's admissions all the way through representing all the railroads in his original call, in his progress report, and he said it was confined to an economic situation, nothing else, because even without spending $500,000 for new equipment Parmelee's

2192 service was satisfactory to all the railroads, 21 of them coming in here.

They didn't call a meeting to see if they could get somebody to do the service better. They didn't call a meeting

to see whether they could get a different labor arrangement, not at all.

It wasn't even considered and never was it there at all until this question of policy got involved in it, and that is the issue we can't try.

He said:

> "We believe the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Keeshin, because we have assurance of a maximum coupon rate in the fourth and fifth years."

They had the assurance of no higher rate than $1.25, and Keeshin didn't have the assurance, and it went to $1.27, so he was right.

> "In addition, we will avoid the possibility of labor trouble in connection with the operation by a new company with a different union."

Now I come to that labor situation, and right at this time while the thing was under consideration, more of this cricket game, and my friend on the other side
2193 of the table, Mr. Meserow, told you on the witness stand that he didn't represent Keeshin, and he told you under oath that he didn't, and I read to you Mr. Keeshin's deposition where he said he had represented him from the end of 1954 or the early part of 1955, and this is up and around June of 1955.

By Mr. Meserow: We also said, "I don't remember." Don't accuse me of making any false statements here, Mr. McConnell, and I am objecting to it.

2194 By Mr. McConnell: Whether you made false statements is a matter for this jury, and it is within its province, and I read the transcript.

By Mr. Meserow: I have practiced law as long as you here, and I took an oath here.

By Mr. Thompson: Come off it.

By Mr. Meserow: I will not come off it.

By Mr. McConnell: I heard the oath, and I am talking about it, and I am talking about the transcript you read in evidence to this jury.

By Mr. Meserow: You had to stoop to call me as your witness because you don't have any.

By the Court: Mr. Meserow; please.

By the Marshal: Let's have order.

By Mr. McConnell: You heard the testimony. Three labor men now working for Keeshin, and no labor union made any objection to wage scales. There was no labor trouble with the union which represented these men which we have to, by law, deal with, but right in the middle of it Mr. Meserow doesn't write us, but he writes the members—he writes the railroads who have representative members on the committee dealing with this transfer problem, telling them about labor troubles at a time
2195 when he is representing Mr. Keeshin, who is trying to get the contract.

You judge that question of fact as against my brother here who gets up and so vociferously protests. That is within your province. That is cricket. That is the way to do it.

Was this transfer made on merit? If it wasn't, any probative value of the transfer from one company to another disappears. If it wasn't made on merit, all of this talk and all of this buildup and all of this edifice that has been created here falls, and with it falls the credibility of this defense and the credibility of these railroads in this situation, and I say to you people you have never had an issue like this, and you probably will never have an issue like it again, and it is worthy of every possible consideration you can give it, prayerful consideration if necessary, to come to the right result, because the result in this case is going to determine a lot

of things which aren't obvious to you or apparent on the face of this lawsuit.

I say the labor thing wasn't even straight, and I say it to Mr. Meserow and his client and the railroads.

2196 Let's get to something else. We had a contract in this case, and there isn't any dispute about it, which was executed by the Keeshin Company. We had some agreements as to how we were going to operate, and the witness Padrick said they could terminate it overnight, that it was day by day and hour by hour.

I tried to get a concession that it was year to year, and he was going way beyond me. We just had nothing, and then they were quarreling because we didn't have long-term labor relations.

How in the world could we have them? How in the world could we sit down and make a six-year deal with a labor union, or a three-year deal with a labor union when we didn't know if we would have the business from day to day?

The fact they could take it away from us is that they did take it away from us. They were complaining, he said, but they weren't complaining before, and it isn't an honest complaint because they knew the situation, but they dreamed it up later on that they were going to complain about something to justify what they did, so they complained because we don't have more than a year

2197 to year labor contract, and we had to come to them and renegotiate the ticket rate when our labor costs go up.

2198 Well, we are squeezed with the labor costs. It is just one of the facts of life, and they knew it, and we knew it. But it just happened to suit their purposes to use that here now.

As I brought out, we couldn't make any long term labor relationship without a contract, and they were trying

to tell you that they had a contract long before this contract that Keeshin had.

By the way, another thing that was very interesting to me, and very significant, and I haven't heard any explanation of it—how did it happen that in the June 3rd meeting before any decision had been made, Mr. Keeshin had already bought his equipment? $166,000 worth of equipment he had, before the decision. Unbiased? Cricket? Fair deal? What do you think about it?

Just think that over. How did he know? Prior to the decision, how did he know he had it in the bag?

The only explanation on this record is that if he didn't get the contract, he would be in the automobile business. Well, he wasn't in the automobile business, and he wasn't planning to go into the automobile business, and he
2199 didn't go into the automobile business. We just didn't have any more chance at that stage.

You people, when you get in this jury box, you are not supposed to leave behind you all the knowledge you have gained in this lifetime. You are entitled to bring to this problem all the experience you have had in the daily affairs of this life, in this world, and how people act and why they act, and what the significance is of what they do and what they do not do.

I say to you, and I say it in all sincerity, when a man appears at a meeting to find out how he is going to come out in the bidding, and he is there with equipment already bought, that is a mere perfunctory performance, that he is just appearing there. It was all set to music, and if you draw on your ordinary business and life experience, you know it.

You know it, not from what I say, but from what they have said on this witness stand, and what their documents have told you.

I am going to another point. Can we have our lunch, your Honor?

By the Court: Yes, we will.

Have a nice lunch. Come back at 2:00 o'clock.

2200 (Whereupon a recess was taken in the hearing of the above-entitled cause to 2:00 o'clock p.m. of the same day, Tuesday, May 10, 1960.)

2201 • • (Caption—No. 56 C 323) • •

Chicago, Illinois
Tuesday, May 10, 1960
2:00 o'clock, p.m.

Court convened pursuant to a recess.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. John Borst, Jr.,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff;

Mr. Albert J. Meserow,
on behalf of the Defendants John L. Keeshin and Railroad Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant The New York Central Railroad Company,

2202 Mr. Floyd E. Thompson,
Mr. Philip W. Tone,
on behalf of defendant railroads.

2203 By the Clerk: The case on trial.

By the Court: Bring out the jury.

(Thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: Kind of a short lunch, wasn't it? Maybe it is just as well. All right, proceed, please.

By Mr. McConnell: If the Court please, ladies and gentlemen of the jury, I want to call the jury's attention to some cross examination that I had of Mr. Padrick—

By Mr. Thompson: We object to reading from the transcript. As counsel well knows, it is improper.

By the Court: Objection sustained.

By Mr. McConnell: I never heard of that before, that I can't read from the transcript of testimony in the case.

The letter that was sent out, or promulgated, as Mr. Padrick said, stated that:

> "We would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company, and they feel that the service of each has contributed to the success of
2204 the other, notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary because the greater proportion of the transfer fee paid to the Parmelee Transportation Company is absorbed by the outbound railroads."

Then I asked him if he wrote that letter, and he said he did; and if he subscribed to the views contained therein, and he said he did.

I asked him whether or not the matter of the profit and the loss statement and the requests for further increases in rates, and all those things that he discussed, had been

prior to that letter, and he said that they were.

2205 Now after all of this discussion of all of these things about labor troubles, rate differences, service differences, what-have-you, and after everything that had been advanced as a factual issue, or factual consideration had been placed before this committee on May 19th, after all the evidence was in, except for a modification which fixed a ceiling on the rates of the Parmelee proposal, which you are all familiar with, this letter was written by Mr. Small, which is in evidence as Plaintiff's Exhibit 5.

He had been on the committee, and he writes reporting to Mr. Feucht, who was president of the Chicago and North Western Railway, and he writes under date of May 27, 1955:

"With reference to the contract for transferring passengers and baggage between railroad stations in Chicago, the present contract with Parmelee transfer company expiring June 30, 1955, the passenger traffic officers committee which has been negotiating consists of the following railroads, with Mr. Padrick,

2206 chairman of the Western Passenger Association included, New York Central, Pennsylvania, Illinois Central, Santa Fe, Baltimore and Ohio, and Chicago and North Western.

"The attached statement is a brief outline of the present arrangement with Parmelee and the arrangements proposed by Parmelee and by Keeshin. The Willett Company has indicated that they are no longer interested.

"It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads, that Parmelee should be awarded the contract because of their years of experience, their financial integrity, and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract.

"R. O. Small."

He attaches here, and this exhibit will go with you to the jury room, and I ask you to compare what is
2207 here, the different rates, services and so forth, the facts upon which this man, then uninfluenced by any other ulterior motive or consideration, viewed the situation.

2208 As of this date, speaking of the time when they were considering it in the proposals, this is what he said was the view of the committee.

That has great probative value up to that time unbiased, trying to arrive at a decision on the merits with the evidence before them, and here is their decision, as he states it, and it is Plaintiff's Exhibit No. 5.

Something else happened later, but it had nothing to do with the proposals. It had nothing to do with the service. It had nothing to do with the factors which were involved as to the weighing of service, of charges, of the relative merits of the contract.

It is highly significant. It is highly important. Up to that point we have a probative view of the relative merits of these proposals, of the service that Parmelee had performed and appreciation for it and a valid justifiable reason for keeping this contract or this service with Parmelee.

One more thing and then I am going to turn this argument over to Judge Thompson. I think I have mentioned that there were differences in service. Parmelee per-
2209 mitted a ride down to the Loop, to the hotels on the coupon and Keeshin didn't. That was the public.

There was a difference of service within an 82-mile radius, and you heard it from the stand. That varied according to the coupon rate. The witnesses so testified, that the coupon rate on the Keeshin proposal was higher than the Parmelee proposal.

There is no question about a dollars and cents difference to the public, the people that rode the railroads and used the service.

After it was all over and all the negotiations had gone, they did enter into a contract, and it was a normal contract, and it was a written contract, and it designated the kind of service that was to be done, and what it was, what it consisted of, and in some instances what the price was going to be.

When you get this in the jury room, their contract, I call your attention to Paragraph 7, which is relating to:

"Transfer shall be entitled to receive compensation computed in accordance with the following schedule from the applicable outgoing terminal line or out-
2210 going steamship line as the case may be for services performed by it under the baggage car transfer service."

Then under Paragraph 8, the special baggage transfer service is defined, and that had to do with picking up baggage known as "PA" service and taking it downtown and checking it, and you will find in Paragraph 4 under 8:

"The Transfer shall obtain revenues for such services by billing in the usual manner to the outgoing terminal lines for the coupon involved and shall retain for itself twenty-five cents for each piece of baggage."

That is from the public, and that price was fixed and determined.

We had some colloquy here when it was mentioned by Mr. Meserow, I believe, as to whether it was fixed. He used the right words; it was fixed. It was a fixed price which the public had to pay determined by a written contract between all the carriers and this transfer service.

2211 Then in another paragraph you will find at the end of this that they all agreed shoulder to shoulder

to recommend Keeshin's company as against any other company and to do everything that they could to see that Railroad Transfer Service:

> ". . . shall be identified in the minds of all incoming and outgoing passengers of the Terminal Lines using terminal stations as the sole and exclusive baggage transport service and enterprise upon which the Terminal Lines rely."

There was no such proposal or there was no such arrangement with Parmelee. It was a matter of individual contract what the charges would be on these pieces of baggage, and they were going to move one down for the coupon and 25 cents for each piece of baggage.

It may seem small, but there are a million and a half people using this service a year.

Then there was a fixed price in here for the removal of remains, $5.10 as a fixed price, arranged not by voluntary contract between the service and the traveler but stipulated by these railroads, and then there were schedules and tariffs set forth in here, and there is testimony as to what they were, 75 cents for the trunks, 50 cents for a piece of baggage, and referred to in here as a pickup and delivery service, which is in the contract itself, stipulating the prices should be in accord with the tariff.

Of course, the public was injured by that sort of an agreement. There was no competition as to the price, and they were doing everything they could to prevent any competition as to the price. They couldn't help but be injured. It was the exact injury against the public which these laws have been promulgated to stop. There is no question about it. There is no denial about it.

How can you find any other verdict in this case except that the public was injured by this change and injured by illegal conduct?

Now, I come to the end of my direct argument. I will have something more to say when I have heard Judge Thompson's argument. If I have talked too long, I am sorry, but as I said at the beginning, I don't want to leave this thing, leave anything that I have overlooked that you people should hear, because it is a serious case.

2213 It is a most important case. It is a case deserving of all the attention and all the acumen and all the ability you may bring to it.

It may look small to you in the way it is submitted, but the implications and the results and the effects of it—it will be, to my mind, like a stone thrown in the water, and the outgoing waves reaching out and out and out, and the effect of this discussion is impossible to predict, except that it is going to be one of the most outstanding, one of the most historical in any case that has been in this court in my time.

Thank you very much for your attention.

2214 By the Court: All right.

By Mr. Meserow: May I have a few minutes, please?

And Thereupon Mr. Meserow Addressed The Court And Jury In Argument On Behalf Of Defendants As Follows:

By Mr. Meserow: I would just like to take a few minutes, if the Court please.

First, let me apologize to the Court and the jury for my little outburst this morning, but when you hear counsel continuing to make misstatements about railroad witnesses, whom I don't represent, you sit back and you listen and you think things inside, but when he refers to me, as a lawyer who has practiced for over thirty years in these courts, and when he calls me as a witness, and I take the oath to tell the truth, and he tries to make me out a liar, I just couldn't sit still, but if my outburst in any way

offended any of you ladies and gentlemen, I apologize to you and the Court.

Let's remember this; that he called me as a witness, and whatever I testified to, he is bound by it. He can't criticize me. He can't say, "You are wrong, Mr. Meserow." He is bound by that. Whatever I said, he has to take it.

2215 What did I say about this union? I represented the Parmelee drivers, and I didn't represent Mr. Keeshin until the end of September, 1955. He started October 1, his operation.

Actually, it doesn't make a bit of difference who I represented, and even if I did represent Mr. Keeshin, what of it? I represented a lot of clients then, and I still do, other than Mr. Keeshin.

Actually, it doesn't make a bit of difference whether I represented Mr. Keeshin or I didn't.

It happened as I testified. It is in the record as evidence, his evidence, that I called the railroad representatives only for one purpose, to try to get Mr. Markin to come up from his three-cent offer to these drivers who had been underpaid for years, and that is what I told you.

Let's take Mr. Markin, the man on the other side of the table, the man that owns the Checker Motors Corporation, the man that furnishes the automobiles at his price to Parmelee Transportation Company, the man who owns and controls Transportation Maintenance Corporation that fixes and repairs these cars at the price he fixed, the man that owns and controls the Benzoline Motor

2216 Fuel Company, the Utilities Motor Fuel Company, and sells the gasoline and oil to these, to the Parmelee Company at the price he fixes.

He is the man that offered these laboring people, the drivers, three cents an hour increase, the great benefactor, and they were mad, and I testified to that.

Let's talk about this union that he calls an outlaw union. There is no evidence that it is an outlaw union. There are a lot of independent unions, and these men, I testified to, and it is in the record, that they were dissatisfied with their local union, Local No. 725, because the officers of their union never did a thing for these drivers, and they played sweethearts with Mr. Markin for years.

That is his evidence, as he called me as a witness, and it is evidence and he is bound by it, and when Mr. Keeshin said, was asked about the question about three years after 1955, "When did Mr. Meserow represent you," he said, "Either in late 1954 or early 1955. I don't remember."

2217 He didn't remember, and I don't think he would remember today if you asked him the question, but that is enough for that.

To show you what kind of misstatements my friend here, Mr. McConnell, makes, when Mr. Bayr, the general manager of Railroad Transfer Company was on the stand, he asked him on cross examination, "Tell me how much equipment do you have? How many cars of this kind and that kind? How much did they cost?"

He added it up. He didn't use an adding machine, apparently, and I don't know how far he went in school, but he added it up to $166,000.

While I was having lunch, I added it up, and I came to $312,800 on the testimony of Mr. Bayr.

He wants to make you think that Mr. Keeshin promised to put up $500,000 in this new enterprise, and he only spent $166,000.

2218 Now that is back in 1955 when prices were cheaper. They are much higher now. But he forgets that on top of the $312,000 that Mr. Keeshin had to buy uniforms for all of his employees; he had to put up working capital.

He can't start with nothing. He had to buy signs, he had to buy stationery, he had to buy office equipment, typewriters, everything else, furniture, and so on.

That came to a tidy sum that we estimate at $140,000. So add the $140,000 to the $312,000, and it gets darn near $500,000.

But Mr. Markin, his client, what did he say? He was running these old clunkers, that they admit were three years old, but I think they were a little older. But they were three years old, let's say. He was running his old clunkers and said, "Yes, now that I am being pressed by Mr. Keeshin, I will spend, Mr. Railroads, $500,000."

When? Six months to eighteen months or twenty-four months, he is going to spend it.

What did Mr. Scheeder, his witness, say? His witness said, "We were about to buy new equipment anyhow." Believe me, they needed it. So he was magnanimous, Mr. Markin. He was going to spend all this money when he would have spent it anyhow.

2219 Now Mr. McConnell characterizes this beautiful photograph of their Parmelee vehicle, which is in evidence, he characterizes this as being a picture that we took on a Sunday in the dark.

What is the difference when it was taken? This is their vehicle. Their own witness testified that it is. This was in use in 1954 and 1955 when they quit, or were supposed to quit.

Now, their own witness testified and identified this picture, Mr. Scheeder. This is the kind of equipment that the public got, not the fine, modern vehicles that you saw pictures of that were passed around to you by the Keeshin organization.

He criticizes this picture. Did he come up with a picture taken in the sunlight on a busy day? Not a single picture

did Parmelee come up with. Why? Because they are ashamed to show it. They are ashamed to show this jury, and you have got a couple of drivers of vehicles here, and they know. That is why he didn't come up with the pictures.

Now remember this, ladies and gentlemen of the jury: They brought this case. The burden, as the Court will instruct you, is upon them to prove their case. It is not
2220 our burden to bring in pictures of their vehicles with the sun shining and beautiful girls with bathing suits on. That is their job, and they haven't done it.

Now he complains that our witnesses had to be on the stand and he had to claw, he had to claw this information out of them. Well, that is too bad. They are our witnesses.

Now they brought the case five years ago or four and a half years ago. When they brought the case, it is customary for lawyers to first find out if you have any evidence, and do you have the witnesses to testify in support of your case so that you can prove it.

2221 They apparently didn't have any witnesses, so they had to claw it out of our witnesses. That is tough, Mr. McConnell. I feel real sorry for you. But the burden is on him, and the Court will tell you so.

All I say, ladies and gentlemen, I am going to leave the burden of this final argument to my good colleague, Judge Thompson, and all I want to say is this: Keep this in mind. All you have to decide, as the Court will instruct you, is was there any injury to the public by reason of the Railroad Transfer Service taking over this operation?

Keep in mind some of the things that were more beneficially put out by the Keeshin organization than were put out by Parmelee, such as the equipment. I won't go into all the details. The radio dispatch, the air conditioning, the automatic transmission and, well, all of this other equipment that you heard about.

In addition, we had faster service, as the railroad witnesses testified to. There wasn't much waiting over ten minutes at the most. We also had testimony of how long the Parmelee vehicles had to wait because of their
2222 poor dispatching system, and the fact that we were available for the Civil Defense, which was a benefit to the public, all our equipment, all our drivers. The fact that when a guest who came to a station to meet somebody could ride free, and Parmelee charged them seventy-five cents for that service.

All those things you have here. I won't bother you with going over them.

I thank you very much. Again, I apologize for my outbreak. Thank you.

And Thereupon Mr. Thompson Addressed The Court And Jury In Argument On Behalf Of Defendants As Follows:

By Mr. Thompson: May it please the Court, counsel for the Plaintiff, and ladies and gentlemen:

Mr. McConnell is right that this has been a tedious lawsuit, and there has been a lot of interruption by reason of difficult legal questions which were presented to the Court, which of course are not problems of the jury

The Court has decided those matters, and counsel are supposed to respect the decisions of the Court. As far as our side is concerned, we do respect the decisions
2223 of the Court. I shall argue this case only with respect to the matter which has been submitted to you, or will be submitted to you by the Court, and that is, was the awarding of the contract for the transfer of passengers and baggage between the stations in Chicago through the Railroad Transfer Service rather than the Parmelee Transportation Company injurious to the public, or contrary to the public interest, or however you want to express it.

Now that is a rather simple question to be sure, but it is a question which there has been some dispute about. We shall undertake to talk about those things that are in evidence, and shall not make any effort to draw upon our suspicions and by innuendo and insinuation ask you to decide this case contrary to the evidence; in other words, without any evidence to support your decision.

2224 Now I don't see any use getting greatly excited about this. Mr. McConnell says this is the most important case that is ever going to be tried, and that your decision here is going to be historic.

Well, I am not much of a prophet. I wouldn't know. But it is an important case, there isn't any doubt about that. Whether it is earth-shaking or not is a matter that only time will tell.

Now, I think what you folks want is light, and not heat, and I don't propose to get very excited about this. It is just another lawsuit. It does have an important question and the consequences of your verdict are important to a lot of important people.

Now, true, a railroad organization is a large organization. It has folks in all categories of service in the organization. Some railroads are larger than others. Positions are more important in some than in others. But there is one thing about it, and that is that the president of the corporation has been selected by the Board of Directors of the corporation, and is the chief executive officer, and he has the responsibility of making the decisions for the railroad, not someone who occupies a subordinate position, who has been assigned certain duties.

2225 Obviously, that person must do his job and he must express his views and he must communicate to his superiors in the organization his views and give them the benefit of his views so that they may make the

final decision. But everybody on the railroad can't make decisions. Nobody can make the decision except the chief executive officer when the matter comes to finally deciding it.

Just as it is here in court, the Judge has got to make the decisions. He is the chief executive officer here as far as the comparison is appropriate at all. The lawyers are agencies of the Court. We are ministers of justice. We are officers of the Court. But we are not those who are going to make the decisions. We are going to tell the Court and the Court's arm, the jury, what we think about the facts, and then the jury is going to reach the conclusion.

Now, there are some things in this case that are not in dispute, and I don't know why we should get all excited about it and waste a lot of time about it.

One of the things they keep harping about is whether or not they had a contract. Well, I don't know why any lawyer would spend any time arguing that question.
2226 There isn't any question but what there was a contract at all times.

Every one of you that has employment with any one has a contract of employment. If you don't get your wages, you sue on the contract and get your wages. Everybody that renders a service or that furnishes goods to another, expecting to get paid for it, has a contract. It doesn't have to be in writing.

Now when Mr. Sloan, who used the name of Mr. Anderson—they keep talking about Mr. Anderson. Mr. Anderson testified that all these documents were written by Mr. Sloan, who was one of his assistants.

When Mr. Sloan wrote in this memorandum that "We have been doing business with Parmelee all these years without a contract," he was using the layman's expression

of what a contract is, that is, that it was a written instrument.

Of course, that just isn't so, as any lawyer knows, and I am not going to waste any time trying to give you a course in the law of contracts.

2227 They did have a contract, and that contract, they alleged in their own complaint in the Superior Court of Cook County, and I read a paragraph from that to you the other day, and that stated in so many words, over their own name, that they had a contract and what the terms of that contract were.

Now the contract, according to their own allegations in this complaint, was not just a simple day-by-day something, but it was a contract which had obligations in it, so they say in their own language:

> "By these agreements the Chicago Terminal Railroads engaged plaintiff to render said transfer service and agreed that no other person, firm or corporation would be granted any right or privilege in connection with or be engaged or permitted to perform such transfer service in Chicago on their behalf. Plaintiff under said agreements was required to meet all trains and to provide sufficient facilities and personnel available at all times to transfer all pas-
> 2228 sengers and their accompanying checked-through baggage to whom Chicago Transfer coupons were sold or issued on through or combination railroad tickets."

Now it goes on another page or so. Why waste time on an issue that doesn't exist? Ofcourse there was a contract. They had a contract, true, without any termination date fixed from year to year, excepting as they would come to the railroads and make propositions for changing the contract which they had been operating

under the year before. After debate back and forth, they would agree on terms of what the contract was to be. The last one they agreed to in 1954 was that the service to be rendered by the Parmelee Transportation Company was to continue at a rate fixed by that settlement agreement in 1954 until June 30, 1955.

So that when we came to consider whether or not the contract would be awarded to the Keeshin group or to the Parmelee group in the spring of 1955, we had an arrangement with Parmelee that everybody understood, no doubt about it, was to terminate on June 30, 1955. All of the negotiations with Parmelee had been what will you propose to give us by way of service and cost
2229 after July 1, 1955? That is all we ever talked about.

So there isn't any question but what they had a contract, and there isn't any question when it terminated, and that was on June 30, 1955.

So we had to make a deal with somebody. The railroads had to have this service, so they thought, at least, and I think it is perfectly logical and reasonable they did have to have it because these railroads were selling through tickets to passengers. In other words, the railroad operating out of New York which might have been the New York Central or the Pennsylvania or, in those days, the B&O or the Erie, a railroad there selling a passenger a ticket to go to Denver, Colorado, or to Los Angeles, California, or Seattle, Washington, sold a through ticket.

Now none of these eastern railroads went beyond Chicago. They sold a through ticket which provided for transfer of themselves and their checked baggage in the City of Chicago between terminals.

That through ticket was the same, whatever choice of railroads the passenger made. If the passenger chose a

railroad that came into the Union Station, like the Pennsylvania did, and chose a railroad that went out
2230 of the Union Station, like the CB&Q did, then of course they didn't use the transfer coupon because there is nothing to transfer. You just get off one train and onto the other in the same depot.

But if they sold them a ticket on the B&O, then they got to the Grand Central Station when they got here, and if they sold a ticket out on the Union Pacific or the North Western, as it was then, then of course they had to go clear across town to get to the North Western Station to go on out.

Now it didn't make any different what choice of line the passenger selected. He got exactly the same service at exactly the same cost and with the transfer included, if a transfer was needed.

2231 So we had here, coming at the end of June 30, 1955, a matter of continuing this service, which the railroads had provided all these years because of the unusual situation in Chicago. There is no other place where railroads come in from the east or come in from the south or come in from the west or from the north and converge. There is no other place where all railroads terminate in the city excepting in the City of Chicago.

So we have a situation where there is no such thing as buying a ticket on the same railroad from New Orleans, Louisiana to Minneapolis, Minnesota. You have got to come in here on the I.C. or GM&O and you have got to go out on the Burlington or the Milwaukee or the North Western in order to get up there. Of course, you can go on the Soo, if you have nothing else to do but spend all day getting there.

But anyway, you have got to get on another railroad.

Now we came to that situation, and the railroads were

perfectly free to make a contract with anybody they pleased. They had no obligation to make a contract with Parmelee. They had no obligation to make a contract with Keeshin. They could make it with anybody
2232 that made a proper bid and submitted an agreement which was acceptable to them. They were entirely free agents so far as anything in this record shows to make a contract with anyone they pleased.

They were buying the service and paying for the service, the railroads. So when they wanted to buy the service and pay for it, they made their own bargain.

Now, there is another thing that is undisputed in this case, and which I think we might dispose of right now and get it all over with, and that is who is the Parmelee Transportation Company?

Now, it isn't some little helpless institution that needs somebody to protect it and guide it. Parmelee Transporation Company, this family tree, if you please to call it that, if this was going to join the D.A.R. or S.A.R. or any of the rest of these organizations, this would be the great grandfather up here, and these would be the grandchildren and children, and so on. That isn't what this is.

This is a chart showing the organization of the companies that are interlocked here, and which are all one family. That one family has a top, and the top is
2233 Morris Markin.

Now Markin owns all of Checker Taxi Company, Inc. of Chicago, 100 per cent of it. So when we are talking about Checker Taxi Company, Inc. of Chicago or Morris Markin, we are talking about the same thing as far as this is concerned. He owns it 100 per cent.

Now Morris Markin or Checker Taxi Company of Chicago, whichever you want to call it, goes down here and it owns 48 per cent of Checker Cab Manufacturing

Company of Kalamazoo, Michigan, 48 per cent of it.

2234 The Checker Cab Manufacturing Company of Kalamazoo, Michigan, owns sixty-three and a fraction part of Parmelee Transportation Company. Parmelee Transportation Company then, in turn, owns forty-seven percent of the Chicago Yellow Cab Company, but that isn't all of Chicago Yellow Cab Company that is owned by this same group, because Parmelee Transportation Company owns directly sixty-three percent of the Chicago Yellow Cab Company, but other fifteen percent is owned by the Checker Cab Manufacturing Company—is owned by the Checker Taxi Company of Chicago, which is Mr. Markin, so that the fourteen or fifteen percent owned up here, half of that is owned in the next category by the Chicago Cab Manufacturing Company, and then sixty-three percent of that is owned, so you can take your algebra and figure that one out.

Anyway, it is more than half of it, more than fifty percent of Yellow being owned by Mr. Markin.

By Mr. Lazarus: That is not true, Judge. You are not reading that thing correctly.

By the Court: If you are counsel of record,—

By Mr. Thompson: Yes, he is of record.

2235 By Mr. Lazarus: I am of record.

By Mr. Thompson: He is attorney of record, and he testified for his own client in his own case where he is attorney of record, if you want to get something else on the record.

There seem to be a lot of lawyers here that have springy seats. They can't sit still.

By Mr. McConnell: You have one of them.

By Mr. Thompson: I know it. I am not quarreling.

As a very distinguished man once said, that I can't always quote, but he said, "If you can't stand the heat, stay out of the kitchen."

By Mr. McConnell: That is a good thought.

By Mr. Thompson: That is a good thought.

By Mr. McConnell: Why don't you practice it?

By Mr. Thompson: I can stand all the heat you can give me. Now, let's go on with our lawsuit.

After we get this family tree here, and Mr. McConnell, who is the spokesman, can fix it up, if he knows how, but anyway, here are all the potatoes down here on the end of the vine, which includes the service companies and the oil companies, and what have you, and this is no new thing, and this is no 102 year old thing.

2236 This Parmelee Transportation Company, Inc., that is the plaintiff in this case, was born in 1929, and when it was born, it had as its creators a syndicate of New York bankers, so they call it, New York stock brokers.

This syndicate in New York, when it produced the Parmelee Transportation in 1929—

By Mr. McConnell: I object to this. There is no evidence of anything about that.

By Mr. Thompson: No evidence about what?

By Mr. McConnell: About any syndicate in the record.

2237 By Mr. Thompson: Well, I read Mr. Markin's own testimony, and the jury is going to have to remember whether this is so or not, but I read Mr. Markin's testimony as you remember where Mr. Markin said that a syndicate of New York bankers organized this in 1929, and Mr. Markin who now owns it ought to know.

These bankers, after they got this thing organized, just had a bunch of stock. They had to buy something for their company to function with, so what did they buy? I don't know what all they bought, because we are not interested in all the things they bought, but according

to Mr. Markin's testimony I read to you they bought this transportation interstation service here in Chicago, which was then owned by an old company called the Parmelee Company, not the Parmelee Transportation Company, but the Parmelee Company owned this interstation transfer service here, and that is all it owned as far as this record shows.

The Parmelee Transportation Company in 1929 bought that as one of its assets. It also bought, so Mr. Markin testified, as I read to you, the Yellow Cab Company of Chicago, which is another one of its assets, and bought it in 1929, so he said, and so we have this institu-
2238 tion commencing in 1929.

According to the testimony, and there isn't any dispute about this, as I say, we have an institution which owns all, either in controlling interest or 100 per cent, of the ground transportation in the City of Chicago, the Yellow Cab, the Checker Cab, the majority in both instances, the Air Transport, 100 per cent, the interstation transfer, 100 per cent, and so if you want to ride, you had to ride with Mr. Markin in 1954.

What happened in 1954? Nothing new happened in 1954. It was simply a repetition of what had been happening year after year.

Mr. McConnell said there had been three fare increases in 102 years. Well, I don't know where he gets his information about the first sixty years, but the last thirty years that we are talking about there have been about a half dozen, so we don't need to bother about the other ninety years or sixty years which nobody knows anything about as far as this record is concerned.

I am sure back in the days when they drove a horse and buggy pulling the hacks between the stations here in 1853, I don't think they used any airplanes or
2239 automobiles in that time, and if they did, we have not proven it yet, but when they were pulling these

things by horse and hauling the baggage in the drays and the people in the hacks, then of course they had some kind of a charge, but we don't know what it is.

In 1934, so the testimony is, the charge was 75 cents, and it continued as that until 1942.

In 1942 it was increased from 75 cents to 85 cents, and then in 1948 it was increased from 85 cents to $1.00, and in 1952 it was increased from $1.00 to $1.05.

2240 In 1954, and we will go through the demands in a minute, it was increased from $1.05 to $1.12½ for the first three months, and from $1.12½ to $1.20 for the second three months, and then one cent for each three cents of wage increase after July 1, 1954, with a contract on through to June 30, 1955.

You can figure up how many changes those are, but I am not too concerned.

In 1954 this thing had been going on time after time, time after time, these increases with a complete refusal to show the books, and why didn't they show the books to support their demands? It is perfectly obvious why they didn't. It is perfectly obvious why they didn't.

The whole kit and kaboodle of the whole family is in a set of books, and they couldn't separate out of that big family this local interstation transportation service here, because it isn't even mentioned in here.

It was just a little part of the Parmelee Transportation Company, Incorporated, and of course they couldn't tell us whether they were making money or losing money

2241 unless they wanted to bre[illegible] it down and show us whether they were or not.

Another thing, when the Parmelee Transportation Company bought some vehicles to furnish this interstation transfer service, where did it buy them? It bought them of Mr. Markin who owned 48 percent of the Checker Manufacturing Company up here at Kalamazoo.

If they wanted to show they were making a lot of money, then Mr. Markin could sell his cabs to them for a very low price so they didn't pay any profit to anybody, and that they just got them at actual cost of manufacturing, and they could lose some money up here if they wanted to, because they would make it up down here.

If they wanted to show this institution was losing money, all they had to do was sell the cabs at twice what they were worth, and then they would lose money. Of course, they couldn't show us the books, and they didn't. That is the important part of it, and they refused year after year to do it.

Finally, these railroad men got a little fed up with that. That is those who were responsible for running the railroads and making them profitable got fed up with
2242 it. Of course, the man who was just hired to do a job, he didn't have to make the railroad make any money, and he wasn't so fed up, but those who were at the top, the chief executive positions, those responsible for the management of the railroads and the interests of the stockholders and the public did get fed up with it.

That was one of the things, and that wasn't phony either, as Mr. McConnell would like you to believe, but that was one of the real things that prompted Mr. Whittington and Mr. Gurley and the other men of responsible positions who testified to make a change.

2243 Also, the matter of continuity of service was of extreme importance. You don't stop the railroads—you don't stop the people coming in to town overnight. They flow through the City of Chicago regularly every day, and you have to have a continuous service if you are going to have any service.

I appreciate there is a stoppage in any kind of service. I understand that, and nobody is asking for perfection

here, but in 1947, and that is going back plenty far enough in this thing, in 1947 the Parmelee people themselves came to the railroad representatives and said to them, "We have been working on this matter of making a bargain with our labor folks, and we have not been able to come to any agreement."

In Exhibit No. 9, which we offered in evidence, they say that:

"Prior to the expiration of our union contract,"

and this is on July 29, 1947, and the contract expired on June 30, 1947, but—

"Prior to the expiration of our union contracts on June 30, 1947, negotiations were conducted between
2244 the company and the union, and various compromises have been offered by our company to our employees, and to date all offers have been totally rejected, and it is apparent we will face a strike at any moment because in no event can we meet all their demands."

There is a lot more in that letter, but that is enough.

In other words, there was a communication to us telling us they had had these threats, and that they had to have—and that we might be faced with a strike, and then in No. 7 it was represented again by Mr. Landman, Passolt and Mr. Scheeder, who were the representatives of the Parmelee people at this meeting with the representatives of the Terminal Lines, where it says:

"We gave you recently a brief outline of the possibility of a strike of the Parmelee drivers covering increases that they have made. The offers that have been given, the attempts at mediation, and so forth. However, they stated it was their understanding,"
2245 that is, these three men,

". . . that the drivers intended to take a strike vote this Friday, August 1, 1947 and that possibly all of their service would cease at 12:00 midnight, August 1, in the event of a strike vote."

That was brought to the attention of the lines. They had to do something, because they couldn't leave their people sitting over at the stations depending on the Yellow and the Checker taxis, so they made a recommendation that in connection with the handling of passengers "We will give each of our passengers that gets off the train with one of these coupons, transfer coupons, 60 cents in cash and then take the 60 cents and pay it to one of Mr. Markin's cabs and let him take them across town."

2246 In the next document they say, "We will arrange to have the baggage transferred," document No. 8, "arrange to have the baggage transferred by shuttle service. That is, we will back up a baggage car to one of the depots and load the baggage in it and then we will move it to another one, and we will switch it around town and get the baggage around some way."

Those were the arrangements made, tentative arrangements obviously in 1947.

This matter of having these difficulties was not just once, it was a continuous thing, and in 1950 they really had a strike and it lasted six months, and they put into effect this temporary service, as I have indicated.

In 1954 you will remember, after we made our deal with them and had our settlement to pay them up to $1.20 for the second quarter of 1954 and made a deal that the contract from July 1, 1954, to June 30, 1955, would be the $1.20 plus one cent for each three cents of wage increase, well, when July 1, 1954, came around, were we able to tell whether or not we were going to have service the next morning or the next morning or the next

2247 morning or on August 1 or on September 1?

No. Mr. Markin writes us on September 23, 1954, which is practically three months, two and a half months after the June 30th date when the contract expired, and

for two and a half months we were sitting wondering whether the next day we were going to have service, and he says on September 23rd:

"We wish to advise you that we have entered into a new wage agreement with the union representing these employees who are engaged in this transfer service. These agreements are effective July 1, 1954."

That is backtracking the two and a half months.

". . . and terminate June 30, 1955, and necessitate an increase of five and a half cents."

Therefore,

"You are stuck for two more cents, and therefore your charge will be $1.22."

The contract price then by Parmelee after July 1, 1954, was $1.22, and put into effect, of course, and backed up to July 1, but anyway, it was $1.22 from July 1,
2248 1954, to June 30, 1955.

This $1.22 was still not the price which Mr. Parmelee, or Mr. Markin, said he had to have in order to break even. He said, when he made his demand for an increase to $1.25, retroactive to January 1, 1954, that he really needed $1.32 to $1.35 to break even, and he said during all the negotiations, "I just can't make a deal with you less than $1.25 retroactive to January 1, because we are not making any money, and I won't have a cushion to carry any further losses."

He said, "If this matter of the number of coupons or number of passengers transferring keeps on going down and reducing in number, then it will have to go up to $1.50 probably."

Well, as a matter of fact, according to his own table which he furnished, it would have to go up even more than that.

2249 The negotiations went on for three months, January, February, March, and we come along in April,

and we still have no agreement, practically four months, and on April 19th they had a meeting with Mr. Markin and his representatives and tried to settle with him for $1.20 retroactive to April 1, leaving the $1.05 in effect from January 1, to April 1.

No; he wouldn't have that. He had to have $1.20, and if that was as far as they could go, he would have to have $1.20 retroactive to January 1, not April 1.

They argued back and forth about it, and then they said, "We will adjourn until April 26th," which was a week later, "and we will consider the matter further."

They all met again April 26th and that is when, after negotiating back and forth, they finally compromised by $1.20 retroactive to April 1st, and by splitting the 15 cents for the first quarter, which made $1.12½ coming up 7½ cents from the $1.05.

At the time they were arguing all this business about how much money they had to have in order to meet these demands, they got a lot of papers from the Parme-
2250 lee people, this big bundle, all of its being submitted to them in support of their claim.

There is no profit and loss statement. It is just a lot of figures to support their arguments that they had to have this amount of money in order to break even—$1.32 to $1.35, and then in support of all that argument they put a lot of tables on here, and one of them is Schedule No. 2 to this long letter he writes, and in this Schedule No. 2 he says, and submits to the railroad people on April 16, which was the time before they finally came to their agreement, the following:

"The premises on which this proposal is made is that Parmelee must have men and equipment available to meet all schedules and emergencies, so when the number of coupons received by Parmelee is decreased, a corresponding

increase in the rate schedules be adjusted quarterly on January 1, April 1, July 1 and October 1 of each year."

He wanted to fix it on quarters.

". . . In accordance with the number of coupons re-
2251 ceived in the preceding quarter. For example, if the number of coupons received by Parmelee during the second quarter of 1954 amounted to more than 390,732 and less than 390,382, Parmelee would receive $1.10 per coupon for the quarter commencing July 1, 1954 and then ending up September 30, 1954, as per the attached schedule."

Which I will call to your attention.

"It is further proposed that adjustments also be made in the price of the coupon on the same dates as above for increases in wages paid to the drivers. The rate of increase in the price of the coupon to be one cent for each three cents increase in wages."

He is referring to this table, and saying that if the passenger business keeps dropping down, the passenger number of coupons, then:

"We will be going up in the coupon rate one cent for each one per cent decrease in passengers,"

or 8,000.

2252 Looking at this table over here, you will see that he increased it in this column one cent, as far as the price of the coupon is concerned, for about every eight thousand, which is a round figure, for about every eight thousand reduction in passengers, and this will show that from the railroad passengers passing through Chicago that there is never any variation in the thing, as it is just plain dropping off of passenger traffic because of all forms of competition that we have, and people are not staying home, but they are just traveling otherwise.

He comes down here, and he says:

"When the total of the passengers comes to 1,022,761, then the charge per coupon will be $1.50."

That is the table he is referring to. I took my little pencil and figured this out, and we now are transferring a little over 900,000 passengers, which is 200,000 less than this figure that he got down to in his table, and divide 200,000 by eight thousand, and you get fifteen cents, don't you, and fifteen cents added to $1.50 means that on this day we would be paying $1.65 for every coupon if this
2253 little fellow Keeshin hadn't had the crust to challenge this octopus and step on one of its tentacles and say, "You are not going to rob the railroads any longer in my town."

That is what it amounts to. He was the first one that had crust enough to tell them to "Move off this dunghill if you don't have enough gumption to make this business pay on your own operation. Don't expect somebody else to subsidize you. I will take this job, and I will manage it so that I can make money by reason of improvement in the management."

So Mr. Keeshin had the effrontery to bid for this and push this octopus off the streets that controls all the transportation in effect in this community on the rubber tires, and having had this effrontery, he has to defend himself in a lawsuit along with the railroads with a charge of having done something mysteriously wrong. What it is, I don't know.

There is no evidence that anybody did anything wrong except Parmelee.

Well, the railroads started out trying to get some bids. They tried two or three years to get it and that
2254 didn't do any good as far as the railroads were concerned, but it made Mr. Markin say to himself, "Well, they can't get any bidders for this job. I have the equip-

ment on the streets. Nobody is going to take this over and challenge me and this transportation business in Chicago, so I am now the cock of the roost, and I will take from these railroads whatever I want to take from them.

2255 So they invited some more bids in 1954.

Now we keep getting a lot of information about what this resolution was that was passed on January the 5th. After considerable discussion, the railroads, tired of this business of being blackjacked every three or four years, passed this resolution. Now this resolution doesn't say anything about this being solely for economic reasons. Obviously, economy was uppermost in their minds. Obviously they were trying to stop this constant jacking up of the price of this coupon.

So the thing that was uppermost in their minds at the time they passed this resolution was dollars, economics, pennies.

But here is a resolution they adopted, and it is not limited to economics.

"It is recommended that a committee consisting of the—" you know the six railroads without my reading them again. ". . . be appointed to make a study of the transfer situation, including various types of operations that can be devised to definitely meet the needs of the public

2256 without increasing the cost to the railroads. Report and recommendation to be made to the lines later."

So that the thing that that committee was appointed for was to investigate this whole thing and to reach a conclusion, and then they began the investigation. They invited everybody to come in and bid that would come in and bid. Nobody put in a bid except Keeshin, and when did he put his bid in?

You remember the September meetings that they had,

and then after Keeshin talked to them a while, he said, "Well, I will make a survey of this thing, decide whether I want to file a formal bid."

He made a survey, and then he called the committee together again, and said, "I would like to sit down and talk with you about the kind of service you really want. I have got some ideas about this thing."

So they had a meeting in November, and they talked about all these matters that Keeshin thought could be done to improve the service, and the committee thought this was good and that was good. That was the negotiation. Who proposed what and what was proposed is of no consequence then excepting it shows that men were thinking and men were working together.

2257 So Keeshin, after that meeting, filed a written bid on December 15, 1954. Now just don't forget that.

And what was his bid? $1.20 for the first year. Parmelee was then charging $1.22, and just couldn't get along without it. In fact, he needed $1.32 or $1.35 to break even, and by his own table it was going to be $1.50 right soon. But he just couldn't get along without it.

Keeshin files a bid for $1.20. Now, he sure wasn't copying anybody else's bid. He proposed not only $1.20, but he proposed to give them better service, and he outlined it. I will not go into detail.

Then early in January the labor union here that represented the Teamsters, different unions, I suppose, made one of these agreements with the employers which gave the base pattern for the three year labor contract.

2258 Well, after that came through, Mr. Keeshin got a letter from Mr. Bone, chairman of the committee. He said we just noticed this in the paper. Does that make any difference in the bid you submitted on December 15th?

Mr. Keeshin wrote him on January 15, one month later than his original bid, four days after he got the letter from Mr. Bone, and he said, yes, it makes a difference. Now I can give you a fixed rate: $1.20 the first year, as I have already told you; $1.22 for the second year because of this new wage scale; $1.23 for the third year; but since the labor unions only have a three-year agreement with us, the last two years, of course, I would still have the one cent for each five cents increase in the labor cost for the fourth and fifth years of this proposed contract.

Now that is on January 15. Has Parmelee bid yet? Has anybody bid yet? Nobody but Keeshin. Mr. Parmelee still has his head up in the air. He says nobody can get this away from me; I have had it too long, and I run this town.

So he just arrogantly refused to file any bid until the committee convinced him that if he wanted this busi-
2259 ness, he had better file one and tell what he would do after July 1st, 1955.

So he filed one on March 15, and what is his bid? What is his bid? How did he decide on March 15, 1955, that he could do this work for $1.20, which he had said only one year before he couldn't possibly do for that. But he said in his March 15 bid, I will reduce my $1.22 present charge to $1.20.

Where do you suppose he got the idea of the $1.20? We will just have to wonder because I don't know, but I have got my suspicions.

All right. He makes that proposal, and he is going to charge one cent for each three cents, not five cents, each three cents wage increase. That is in addition to that he had in that bid we should give him a one-cent increase in coupon charge for each one percent decrease in the number of transfers. I just showed you that that would be

now costing us $1.65 per coupon if we had taken that bargain, but we didn't take that bargain.

We told him then that we wouldn't even pay any attention to such foolishness of guaranteeing him a volume
of business. The railroads didn't have any guarantee
2260 of any continuing of business.

So that is the way things stood until April 6th when Mr. Keeshin then wrote a letter in which he amplified the kind of service he was going to give, in which he said that the railroads can have a choice of some of these different things that I have indicated when we make the formal contract if you grant me the contract.

He said I recommend strongly that you stop this foolishness of having your station employees put the baggage, carrying on a truck into the baggage room where the checked baggage goes to, stow it on the floor, then put it back on the truck, wheel it out and put it on one of these transfer vehicles and carry it across town. He said there is three handlings that you don't need to do at all, if you do it right, so I propose to set trailers at the platform so that when you come in with the baggage, you haul it right in, you move it right up to the tail end of the trailer, you set it on the tailgate, and that is the end of that. My people will load it.

Now, he said, of course, if you still want this old straight-
body service, you can have it, but I recommend strong-
2261 ly against it.

All that was made perfectly clear in his April letter, and later on, of course, in the firm contract.

2262 Now we go to May 19th. They make a great fuss; they draw on their suspicions frightfully as to the May 19th meeting.

On May 19th these folks were getting to the place of making a decision, and when you get to the place of

making a decision, you call on the people that can decide. So Mr. Coleman, who had no authority to make a decision for the B&O in Chicago, writes to Mr. Whittington, who is the general passenger traffic manager of the Baltimore and Ohio Railroad, that:

> "I would be glad if you would come out here and attend this meeting on May 19. We are going to hear both of these people now that have bids in and I would like to have you here to get it first hand so you can make this decision."

So Mr. Whittington came out.

Now he is greatly abused because he came out and represented his railroad which his is hired to represent. I didn't know that was any offense.

They said that Mr. Simpson, president of the railroad, told Mr. Whittington how to vote. Of course,
2263 Mr. Whittington says that Mr. Simpson never told him anything of the kind; never at any time told him how to vote; didn't even know how he voted until he reported to him later on. That is undisputed, and I won't spend any more time on that.

The same thing is true with the other people. They voted their own convictions, and the votes were cast later on. But I mean, at the May 19 meeting, they all listened.

Mr. Padrick made it perfectly clear that no vote was taken at the May 19 meeting, but he said at the conclusion of the day, "I got the impression that there was a concensus that Keeshin's bid was the one that ought to be accepted."

Now, Keeshin had been perfectly frank with the committee. How in the world they ever stood for all this horsing around of Markin is beyond me, but he would never answer any questions. He dodged and fiddled and

fooled about it, but Keeshin answered them bing, bing, bing, right down the line, and of course, committed himself definitely about all the questions that came up, air conditioning, furnishing financial statements, new equipment, and all the rest of it.

2264 Of course, Mr. Keeshin didn't know how much this new equipment was going to cost. He hadn't been in the business. He said that he estimated that it would cost $500,000.

Well, his estimate was liberal, as it ought to have been. But by the time he got his equipment and his working capital and got this business going, I haven't the slightest doubt that it was $500,000, and perhaps more.

Anyway, that is neither here nor there. The point is did he get enough equipment to do the service, and that is all we are interested in.

Now Mr. Markin says, "I propose to spend half a million dollars if I get this contract." What did he propose to spend it for? He never had half a million dollars worth of equipment in all of his history in this transfer business so far as anything in this evidence shows. There is not a syllable of evidence.

I asked Mr. Scheeder, vice-president of the company, how much each vehicle cost, how much this cost, how much that cost, and he didn't know anything about it. I asked him how much they had invested in equipment to furnish this service, and he didn't know that.

2265 So there is no evidence whatever, and the mere fact that Mr. Markin said that he was going to spend $500,000 in the next 18 months or two years or six months, one place it says one thing and another place it says another, it doesn't make any difference what it is. It is just a lot of idle conversation, and all he would have done was probably add a few more clinkers that he would have bought up in his manufacturing plant at

Kalamazoo, and got by with the least he could get by with, which is all he had ever done, which is as much as anything in this record shows.

By the Court: You are about half way, Judge?

By Mr. Thompson: I am much further than half way. I am about to quit.

By the Court: We will take a few minutes' recess.

(Whereupon a short recess was taken, after which the following further proceedings were had herein, in open court, in the presence and hearing of the jury:)

2266 By the Court: All right. Bring out the jury, please.

(Thereupon the following proceedings were had in the presence and hearing of the jury:)

By the Court: You have a full hour, Judge and you have twenty minutes, Mr. McConnell.

All right, proceed.

By Mr. Thompson: I got a little stiff from resting. You know, an old race horse has got to be kept going.

Anyway, we were up to the May 19th discussion, but there are a couple of little things I want to dispose of that drops back apiece.

There was a lot of talk made about this 63rd Street transfer out here where Parmelee took our interstation coupon and gave it to one his taxicabs and then they charged the rest of it.

Anyway, it is all out of the case because on Schedule 15 of Exhibit 5, Defendants' Exhibit 5, which the Parmelee people furnished to us, it says:

"Analysis of revenues and expenses at the Englewood 63rd Street Station for the year 1953."

2267 Then they show that that wasn't so hot; they lost money. Then at the bottom it says "Discontinued

March 22, 1954," which was a year and a half before we took over.

Anyway, there wasn't any service out there after March 22, 1954, according to their own document. I wasn't there.

Then there is also on this schedule a Schedule 5, which shows this two-a-day baggage transfer, and it shows that the baggage transfer was made at 10:00 o'clock in the morning. Of course, you can't make it all at once, but the first station they came to was 10:00 o'clock in the morning, and they finished at 12:30; and they then started again at 3:00 o'clock in the afternoon and finished at 5:00.

It says at the bottom, "Baggage arriving on trains after 5:00 p.m. must be held by the railroad until the following day."

So that ought to dispose of some of these sidelines that we are talking about.

Now as I was saying, this May 19th meeting, the thing was gone through in great detail. Everybody knew
2268 this was the last round. Keeshin was brought in there and told to tell the group sitting there together what he would do, and he told them. He had told them in writing on December 15, and again on January 15, and it was all settled as far as he was concerned, and there was no modification of it.

Markin had made his proposal on March 15, and that was all settled as far as anybody knew, and the only thing that he changed at the May 19 meeting was that he finally took out of this proposal this one-cent increase for each one-percent decrease in the number of coupons. In other words, that second escalator clause he took out. Otherwise he left it just the same, which was $1.20 for the first year and one-cent increase for each year after that.

2269 Then the meeting adjourned. The next day a telephone call comes in which he says what? He might

have had Keeshin's January 15 bid right in front of him, and he said, "I will do it for $1.20 the first year," which Keeshin had said, "and I will do it for $1.22 for the second year," which Keeshin had written on January 15, 1955.

"I will do it for $1.23 the third year." Was that just pure coincidence, just happenstance, that Mr. Markin made identical bids that Keeshin had made five or six months before?

Then of course in order to do him one better, he said, "$1.24 the next year and $1.25 the next year."

Of course there is a lot of fuss made about the fact that his last year was going to be $1.25, whereas Keeshin's last year was $1.27. That is two cents difference, half the price of a postage stamp, but remember that Mr. Keeshin's first year was $1.20, whereas Parmelee was then charging $1.22, so every reduction in this whole program from the start to the finish was because Mr. Keeshin came in to bid.

Otherwise, as I already demonstrated to you, we
2270 would be paying $1.65 instead of $1.25, so the two
cents that they keep fussing about at the fifth year was knocked off the first year and it will all balance out even anyway, but the important thing, and Mr. Whittington made this point, and he said, "I received this news that Markin called up and said that he would make the same guarantees of ceiling that Keeshin had already made five months before as far as the first three years were concerned, that it didn't influence me in the least, because Mr. Keeshin could keep his bargain.

"He had a contract with his labor. He knew what he was going to be able to do, and he could keep his bargain. but Mr. Markin told us at the May 19 meeting that he had no arrangements with labor, that he didn't know whether he was going to even get a contract or not,"

and it didn't make any difference to Mr. Whittington, and it wouldn't have made any difference to any man, to a man of any common sense what the price was if you were not going to get the service.

What he wanted was service. What all the railroads wanted was service, and if you were not going to get the service and going to have to sit on needles and
2271 pins every year trying to find out, they wanted to know.

They said, "Of course, Mr. Markin couldn't make a contract for labor for more than a year at a time because he didn't know whether he was going to have a contract or not," in one breath, and in the next breath they say, "He was going to have a contract for the rest of his life because he had had it for his grandfather's life before him, anyway a long time before."

The truth is that Mr. Markin could have had the same deal exactly for the first three years that Mr. Keeshin had, because the three year labor agreement that was made was not made with just Keeshin, with his labor union or anybody else, but it was made for the industry, and the industry having made the contract for a three year period, in January, 1955. Mr. Keeshin then fixed his bids for three years.

2272 Mr. Markin, when he bid on March 15 didn't fix any bid for three years. He still was persisting in a double escalator clause, going up with wages and going up with reduction in coupons.

We come to this matter of making a decision. They referred and asked you to take note of this document that showed an analysis of the two bids. There is an analysis of the two bids, and I join with Mr. McConnell in asking you to take a look at it. It would be very illuminating.

"The contract term" where Parmelee asks for six and a half years, it says here, and I think it is one place in his record they said they wanted one to June 30, 1960, and the next place they said they wanted one to December 1, 1951, but anyway, Keeshin wanted a five-year contract.

"Coupon rate" and then these rates we have been talking about, the present rate of $1.22 and the $1.23 bid rates we have been talking about.

"Wage contract status." It says that negotiations are in progress on June 2nd, or rather May 27, three days before the deadline, and no contract, and over here it says that three-year contract already fixed with
2273 Keeshin. Maximum rate goes on, and all the rest of these things down here, and it is all there.

"Examination of books by the railroad." It says that railroads not permitted to examine. Parmelee will not permit the examination. Keeshin permits the examination and will furnish a certified public accountant's statement.

Of course, that may sound like it is of no consequence, but I submit that any of you if you were dealing with somebody to make a contract for an increase in the charge for any service, I don't care what the service is, and they came to you and said, "I need an increase, because I am not making any money," well, the perfectly natural thing for you to say is, "Well, if you are not making any money, where are your books? Let us take a look at them. We can tell whether your representation is true or not."

Mr. Markin said, "I can't show you my books, because if I show you my books, then I am going to show you the story of all of this stuff, and that will never do to let anybody know what I am doing with my books with fifteen companies."

2274 Now, we come to the final where we get a contract and we are to take over on October 1, 1955. What happens?

Does Mr. Markin, the Parmelee Transportation Company, play the good loser and walk off the premises and let the railroads go ahead and render the service to the customers?

No. They move their old clinkers down alongside the depots at every place where there was room for one to keep us from rendering the service that we had contracted to render.

2275 Who was organizing the crew to interfere? Mr. Freeman was there organizing them and spotting them around at the different stations, telling them what to do, and then Mr. Krock — and boy, there is a piece of furniture — Mr. Krock adopted the technique of the big lie, which is adopted over in Europe by some people, that if you are going to tell one, tell a big one, and he says that for two and a half years just out of curiosity he gets up at 7:00 o'clock in the morning and goes down and looks at these stations to see whether there is anybody waiting there on the platform or not, to see whether the windows are open for the taxicabs or the transfer wagons, just curiosity, that Mr. Markin didn't know anything about it, that nobody told him to do it, that he was just curious.

If there ever was a "Krock" with a big crack in it that you can see clear through, this is one of them. You can see clear through it.

I didn't need to bring any evidence on it to prove he was telling you falsehoods, because you knew he was, but we did bring the witness who knew.

We brought Mr. Deitreich, and Mr. Deitreich says
2276 that he is on the job all the time, that it is his business to be there, that he was on the job in December, on December 20th at the Dearborn Station, that when the trains came in in the morning, that six of them would come in in an hour, that it is a business

to be there to see that the passengers are properly taken care of.

He said there was no such thing as 200 people on the platform waiting for an hour for transportation. Of course, Mr. Deitreich would know whether there were or not, and then Mr. McConnell, for the edification of all of us, put on one of these typical television trial scenes of asking him what kind of clothes he had on, on this day, and he told him what kind he had on, that he had on a brown suit and tan shoes.

There isn't any contradiction of that, you know, none at all.

Then he asked him where he ate lunch and he said he ate lunch at the Harvey Restaurant, and there is no contradiction of that, you know. It is absolutely the truth as far as we know, and I am sure we don't care a continental whether it is so or not, because it was just one of these things.

2277 You go through a rigmarole of cross examination about a lot of things that don't concern anybody, because you don't have any sensible questions to ask the witness. That is the only reason you ever do it.

Now, getting past that, Mr. Deitreich told you the truth, because nobody has contradicted him.

Then we have Mr. Deitreich also saying that in the summer of 1956, and the summer of 1957, he said, "When I was still on the job, there was no such thing as day by day congestion of people on the loading platform" and he said, "When the folks get out there with their baggage on the loading zone, they are loaded instantly as to the vehicles that are there and within a minute, 10, 15 or 20 minutes the entire group is gone, however big a group it is."

2278 Then we put Mr. Bares on the stand, and then we have him running all over the yards out there

doing everything else, but Mr. Bares says he was right there looking out the window all the time, and there was no such thing as 100 people or so standing on the platform day after day in the summer of 1956 and in the summer of 1957.

Ladies and gentlemen, you know and I know that if these passenger agents of these railroads had allowed that sort of service to be given to their customers, there would have been one less Bares and one less Deitreich in the employ of two railroads in this community. It just isn't so, and we will drop that.

Of course, Krock was the only fellow who testified to all of this. He was probably one of the wrecking crew team on October 1st.

As you know, this lawsuit was started on February 17, 1956, but it didn't start the night before. It started on October 1, 1955, when the service was taken over, and they put these people out there to interfere with our taking over properly, and then Mr. Krock was going around satisfying his curiosity getting this evidence, of course, for this lawsuit, and then it continued for
2279 two years after this lawsuit was filed, just out of curiosity.

There was something said about Mr. Keeshin's employees that are now performing the transfer service being members of an outlaw union. Of course, there is no proof that any union is outlaw. The deduction that I assume they are drawing is that any union, any independent union or any other union, whatever it may be, if it isn't a part of the American Federation of Labor-CIO, then it is outlawed.

Well, I didn't so understand it. I didn't understand that the only legal or lawful unions in this country are those that are affiliated, and they keep talking about

Keeshin or Parmelee having a contract with one of the railroad brotherhoods.

Well, that is the first time I have ever known or heard that the Clerks Union of the railroads was a brotherhood. As I understand it, there are four brotherhoods, and none of them belong to the AFL-CIO, and I suppose they are all outlaws, too, these brotherhoods.

That is just some more fog brought in to conceal the light.

Now, this service that we have. We have a lot of
2280 pictures of some nice looking girls and also some nice looking automobiles. I suppose these girls are entitled to our interest, not only because they are good looking but because they are rendering good service.

You saw these pictures before, and you can look at them again if you want to, but here is one of the girls rendering the service at the desk there telling a couple of folks whatever they are asking. I suppose.

It looks like she is giving service. Here is one of our vehicles. That looks like a nice vehicle. There are doors on each side, nicely painted, folks looking happy as they are coming towards the vehicle, and here is an entire garage full of vehicles and here are a lot more of them, and here is one of our trucks, and here are some more trucks, and here is another bus, and here is a picture which shows how we put the baggage in the back end of these trucks, and baggage is being loaded there.

There is the air conditioner up here on the top of the thing. As far as we know, all the witnesses who testified that are interested, except Mr. Krock, said the air
2281 conditioning was working, that it was all fine and dandy.

Here is the rear end of one of our cars showing they put the baggage in and that there is a partition in there so as to keep the winter breezes from blowing down the backs of the passengers' necks while they are loading.

Of course, they have had them inside of the station, but there are no breezes in the backs of the necks, but they have been making a big fuss about that.

This equipment is all here. We showed you the pictures of ours. Of course, we didn't have a chance to take pictures of theirs while they were operating, because we didn't go snooping around to see what they were doing, and all we could do was to take one of them that was hidden in here behind something, but there it is anyway, and that is the limousine, the 7-passenger limousine, which is nothing but an old broken down Yellow cab, not even nearly as good as the Yellow cabs out here on the street now, because they look pretty good, but this has a slanting bobbed off tailed back there that you couldn't put an overnight bag in, as far as you can tell by looking at it,

and if they had any pictures of showing this great 2282 recessed place back there where you put baggage,

why didn't they bring the pictures in here and let us see them?

Of course, there is nothing new about recessing the back end of an automobile to make a baggage compartment. All of them are. The recess means that the space goes in under the back seat.

Of course, they said they cut down the size of the gasoline tank so as to save them a couple more inches for a duffle bag.

Anyway, the customers all say that the service of Parmelee was satisfactory during the period of time that Parmelee was rendering it, which meant, of course, that that is all they had, that it was the best we had, anyway, and they had to keep saying it was satisfactory when they were writing these memos prior to June, 1954 and into the spring of 1955 because we didn't know whether we were having any bids until the fall of 1955, rather, September of 1955.

We never had been able to get one before, because nobody had the nerve to the invest the necessary money to equip this new business and go into competition with this Parmelee Transportation Company.

They made a big fuss about Mr. Keeshin buying this equipment on June 2nd before the committee had
2283 even acted on June the 3rd. Well now, Mr. Keeshin, according to the testimony here, made that perfectly clear.

The railroads had asked him at the May 19 meeting, "When can you take over?" He said, "I would like to have 90 days to get things organized, but if I have to take over, I will take over right away."

Then they came to the meeting on June 3rd before they were ready to vote, and they sent for Mr. Keeshin and said, "We want to have a little further talk with you about this take-over business. Suppose if you get this contract and the Parmelee company just pulls their stuff off the street the next morning when we notify them, when can you give us this service? We need the service."

Mr. Keeshin said, "I will give it to you the next morning if I have to, if I have to hire automobiles in this town to transfer the passengers until I can get my equipment."

He said, "In anticipation of that happening, I have placed an order for 'X' number of station wagons," whatever number it was, "to perform this service. I already have the trailers and so on from my other industry, and if I need them I can use those for a while, but
2284 I have ordered these station wagons," and they were a little surprised.

He said, "Don't let that bother you at all. I don't want you to be concerned about it, and it isn't to have any influence with you whatever about awarding this contract, but I ordered these station wagons, because there is a threatened steel strike, and if that steel strike occurs

then I can't get the equipment necessary to fulfill my obligation to you, and I am taking the chance, and if I do not get the contract, I shall not be hurt any. I will be in the automobile business a few days, but I can sell these station wagons for more than I have paid for them, so don't you bother about that at all."

That was the whole thing about ordering these stations wagons. If there is anything sinister about that, then let them make the most of it. There isn't anything unusual about it.

2285 Now this is an important case, as Mr. McConnell says. I am not going to dispute that. All cases are important.

This one involves a lot of money, but that doesn't make a case any more important than one that involves little money. A case that involves $100 to one man may be more important than a case that involves a million dollars to another.

The case is important, as all cases in court are important, and certainly in the Federal Courts. The important thing about it is that their whole case is built on suspicion, innuendo. In spite of the effort of his Honor to control the situation and keep the case within bounds that he has established, they kept putting questions to witnesses, Mr. Freeman did, carrying implications, innuendos, insinuations.

All of them were stricken, but the jab was there. The purpose was obvious, and that was to raise suspicions in your minds.

Now the Court is going to instruct you that you have got to decide this case on the evidence that has been admitted by the Court; not evidence offered. Not evidence offered, but evidence that was received by the Court.

2286 Anything that was rejected you must remove from your mind.

Now that is asking a lot of lot. As I observed, I think in your presence one day before the Court here, that when you drive a nail in the barn door, you can pull the nail out but you can't do anything about the hole. The Judge said he would use a little putty on it. Well, he probably would, but there is still going to be a hole there, and you are going to find the putty if you look hard enough.

Anyway, the wound is there, and the purpose was to create a wound, asking these improper questions and affronting the Court's rulings.

Now, we want this case decided on what is before you, not on suspicion. We haven't created any suspicion. We haven't asked you to guess at anything. It is all here.

It is serious business. You can understand it would be a tragic thing to find that these railroad executives, whose business it is to serve their patrons, that they made a contract against the public interest. In other words, that they started out with the idea of in-
2287 juring the people they have got to depend on.

Of course, they didn't. I join with Mr. McConnell in saying that because you have been sworn as jurors doesn't mean that you have to park your brains outside, nor do you have to ignore all of your experiences in life.

Put yourself in the position of these railroad executives. You know from your experience in life that they would not have even thought of doing anything that would be an injury to the public on whom they must depend for their business and their livelihood. Of course, they were trying to serve the public interest. Of course they were trying to improve this service. They couldn't have had any other objective.

Certainly there was policy involved. What was the policy? The policy involved was that if we turn down Keeshin's bid this time, even assuming they are even or

close to even, if we reject his bid this time, we are in the throes of the Parmelee Transportation Company for the rest of our lives. Nobody will ever bid again, and we are stuck from now on.

2288 That was a serious policy, and any executive of any railroad, after weighing all these factors that were to be weighed when it got up to the top where the dec ion had to be made, who had voted against this proposition of Keeshin's and had accepted to continue under the circumstances with Parmelee, after the treatment they had been receiving in this matter of jacking up the price all the time, would have been doing a terrible disservice to their own companies in the first place, and, incidentally, to the public, in that they were getting better service.

2289 Now what they were buying was service. A service that cost you $1.20 may be a much more expensive service than a service that cost you $1.27. The service they were buying was service to their patrons, and if they were getting more for their money, then they were getting a cheaper service.

So even on that score, even if we are only going to talk about the price, the weighing of the two coupons, we would have the benefit in favor of the one that guaranteed the better service.

All the rest of these things have nothing to do with this contract. Pickup and delivery service was merely a matter of private contract. If you lived out here somewhere, had a trunk that you wanted brought down to the depot, then you called the Parmelee service in those days, and now you would call the Keeshin service.

You would say, "I have a trunk that I want to bring down to the station," and you would pay the transfer charge.

The railroads have nothing to do with it. The railroads didn't pay it. The railroads made no contract about it. The tariff that was charged for handling this was changed from time to time. We have no evidence in this
2290 record of what the various changes were, but, it was changed from time to time, as all other prices are changed from time to time.

Of course, prices have gone up in the last few years in this service, as they have in other things, but that has nothing to do with this lawsuit.

The question here is whether this contract that was made was in the public interest. Now that takes into consideration a lot of imponderables. It is impossible to weigh it like you would weigh a sack of potatoes. You have got to take into consideration all of the elements that are involved.

You have got to take into consideration that here is a service that Mr. Keeshin is providing through this Railroad Transfer Service, Inc. That service has been continuous. Mr. Padrick testified that in all of this five years, the subject of whether there would be a continuity of service has not even been raised. There has never been any discussion of the subject.

They had to go through that thing year after year with Parmelee and wait two or three months after the contract expired to know whether they were going to have any service at all or not.

2291 Mr. Padrick said, "In all these four and a half years, the subject hasn't even been mentioned."

Now it seems to me that all things balanced and all things considered, and obviously we must consider in any decision we make in life, all things considered, certainly the public interests were not hurt. The public pays none of this transfer charge. It is all paid by the railroads.

The only way the public could be hurt is on some of these fringe things on one side or the other. Well, we haven't got enough evidence on that subject to even form any conclusions because we have confined ourselves in the main to the issue at stake here.

The railroads started out to let the contract for inter-station transfer service, which is the thing they buy and pay for. The rest of it they don't. The railroads have no control over the rest of it. Obviously the railroads want these other services to be good services because, in one sense of the word, their patrons are interested in having the knowledge that these other services are available. But it isn't the service the railroads provide.

They don't go out to your house and pick up a 2292 bag and bring it downtown, but they want to have somebody they can depend on to recommend. So when Parmelee was in the business, they recommended Parmelee. When Keeshin was in the business, they recommended Keeshin. If anybody else was in the business, they would recommend them, I suppose.

These things are all fringe considerations. They are all without any controlling condition one way or the other.

I join again in Mr. McConnell's statement that this is important. It is not something we want to just sneeze off. It is a serious thing. There could be nothing more serious than to blacken every executive of every railroad in this community by saying that all these 21 railroads, all the men who made this contract with Keeshin, or even all the six that were representing the 21 in the sub-committee, were so derelict in their duty, were so unconscious of their responsibility to the public as to make a deal or a compromise which had a tendency to injure the public, much less one that that did injure the public.

Ladies and gentlemen, there is no evidence in this case that shows that the public has been injured; and certainly

all the evidence in the world to show that they have
2293 got a stable service, a continuity of service, equipment that anybody can be proud of, and that the service is good and that there has never even been any complaints about it.

Thank you.

2294 THEREUPON MR. McCONNELL ADDRESSED THE COURT AND JURY IN FURTHER ARGUMENT ON BEHALF OF THE PLAINTIFF, AS FOLLOWS:

By Mr. McConnell: If the Court please, ladies and gentlemen of the jury, I am not going to engage in any characterization of Judge Thompson's argument. I will get right to the reply to both counsel.

First, Mr. Meserow told me that I was all wrong; he told me that his arithmetic was better than mine.

I went through this record and put down every item that was testified to on their equipment, and it was $166,900. I am off $900. That is how much I am off. That is a fact; that is the evidence.

Now they talk about the $500,000 that Parmelee was to put up as if it was something that didn't exist. I have read to you people letters where the railroads have stated that one of the reasons they wanted to deal with Parmelee was because of their financial integrity.

There was never any claim in all these years, until Judge Thompson gets up here and testifies himself, never
any contention that Parmelee wasn't a company of
2295 integrity.

Now I want to go right to the heart of this thing. There is a lot of talk, he says, about contracts. I cross-examined Mr. Padrick when he was on the stand, and you recall what he said.

I said, "Did you have a contract from year to year?"

He said, "We had a contract that could be terminated at any time, week to week, day to day."

Those were the limitations within which we worked, in negotiating our labor contracts, in dealing with the railroads. They knew it; we knew it. All of those things that he has discussed here this afternoon were discussed prior to January 7, 1955. After that discussion, after all of those things had been raised and talked about, and they weren't raised in the evidence the way Judge Thompson raises them. He has given you a very, very colorful account of conversations, verbatim, which never happened.

Chairman Padrick, who was the chairman of the committee, on January 7 advised the lines present that:

"It was the view of the committee studying the
2296 transfer arrangements that a change in operators should not be considered unless, say, a bid of $1.10 or $1.00 including baggage was submitted by some transfer company."

Now he tries to explain that away by saying that if he didn't write a letter like that, they might lose some bids. They already had the bid of the Keeshin Company. As Judge Thompson so meticulously pointed out to you, that bid was in by December 15, 1954, and they already had it.

Now, that isn't the explanation for this letter. The explanation for the letter is here the chairman of the committee had made an investigation, and they came up with the answer, and that was their position all the way through, as I will show, until May 19th. There was never any variation from it. All the rest of this talk which you have heard in this argument never existed until this lawsuit.

He told you there there were all sorts of rate changes, and that was the thing, the big bugaboo of the railroads.

There were three. I said there were three, unless you want to go back to the depression time when we
2297 voluntarily went down to seventy-five cents to help the railroads. We went from eighty-five down to seventy-five and back to eighty-five cents. It was originally eighty-five cents. The change was in their favor, and it went back to eighty-five cents. That was in 1942.

In 1948, it went to a dollar. That was one change. In 1952, it went to $1.05. That is two changes. In 1954, it went to $1.20, with a retroactive provision in it and a further negotiation, an escalator clause that with each three-cent raise in wages, they would increase the coupon rate one cent.

That was all one negotiation. That was all one change. There were just three. I said there were three, and there were three. I haven't distorted this record, as I am charged with doing.

2298 Now the next attack he takes here, he spent 12½ minutes of your time discussing this escalator clause on the rate going up as the coupons went down; less business, higher rate.

You know, we all know, that that went out in the May 19 meeting. There wasn't any question about it. There is no dispute about it. The railroads objected to it, and it went out. We spent 12½ minutes here discussing something that was withdrawn from our proposal; never in it at all.

Now why spend 12½ minutes on something that hasn't anything to do with the lawsuit unless you are trying to hide something else? I say that this talk about the escalator clause and the wages and the protocol of the railroads, and all that sort of thing, is to try to let you people forget and to obscure from your view the fact that the things that are being urged now were not urged at the time, currently with these discussions, when they were talking.

Now Judge Thompson talks about the presidents and the heads of the lines who are responsible for these great decisions in the railroads. But he isn't talking about that sort of thing here.

If you remember the evidence in this case, 21
2299 railroads appointed a committee. These people were committee members that were making these decisions. True, true, they came from the six railroads, but they were appointed to this committee, and it was only after they had given great consideration and made all their investigations as a matter of policy that these presidents got in, and they got in on a matter of policy which hasn't anything to do with the evidence here.

He says I haven't any right to have you people infer what happened. I have a right to have you people infer what happened when he puts down evidence here to negate what they were doing in this case.

I say that evidence is not true. I charged it then. My cross examination showed my attitude towards it, and those stories did not stand up on that cross examination. Why? Because they were inconsistent with the memoranda and the facts that were stated and the things that were being considered at the time.

This wasn't a case of the railroad president being on the committee. In the absence of something intervening
here, this committee would have taken care of this
2300 in normal course. How would they have taken care of it? We don't have to speculate on that. I concur with Judge Thompson in wanting you to look at this schedule, which is attached here to this Plaintiff's Exhibit 5.

He has got something in here about books, transfers two daily as against four daily. They describe it as 7 and 12-passenger limousines, what he calls taxi cabs—no

good, he says. That he has got, "Books will be audited by reputable CPA firm each year and open for railroad inspection." That is under Keeshin's proposed contract.

That was before them. Everything he has talked to you, you will find here on this schedule, showing it was before them.

Here is the comment, here is the verdict, with all of those facts before them. I am referring to the letter of May 27, 1955 from Mr. Small to Mr. Feucht.

> "It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads, that Parmelee should be awarded the contract because of their
2301 years of experience, their financial integrity, and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract."

There is a skilled, trained analysis, free from any outside influences at that time, and reporting upon what the committee members said.

That is the case in a nutshell. All of these things that Judge Thompson has spent your time on were before these committees at that time, and something else happened. Something else.

Now he says we blackjacked them in every way. How did we blackjack them? The price of a postage stamp, he says, two cents. Well, I am not going to minimize those coupon rates because it was enough to talk about in these negotiations. But they were talked about, and we got nothing from the railroads that they didn't agree to, and we got three coupon rate changes, so far as this record shows, in 102 years. That is a great big picture of blackjacking.

2302 I said on this contract that we couldn't make labor arrangements except on a year-to-year basis.

How else could we do it when they wouldn't give us a contract? How else could we do it? There was no other way to do it.

Keeshin could, with a five-year contract. I don't know, the record isn't clear to me, whether he had a contract then or was just assuring them that he could get a contract, but if he had a five-year contract, he had something to negotiate the wage scale with.

Now, we had a long dissertation about the antecedents and the family tree of the Parmelee Company. Look, Judge Thompson says, you aren't children. You didn't come in here shorn and bereft of your reasoning.

We are opposed by twenty-one railroads who have got their tentacles all over this United States and the seas and other countries. Talk about an octopus. He is trying to make you believe that this isn't a little man's suit.

Just use some of that common sense. How far do you think you or I would go fighting this octopus? We have got to have some money, and we have got to have
2303 something back of us to stand a litigation like this.

It is a little man's suit, and we are fighting it for him. If you brought your intelligence with you into this jury box, you will know that this is a fight of a little man for a fair chance. That is what this lawsuit started out as, and that is the way it ends, and that is why it is important.

He says that these railroads will be blackened. They put us out of business, a hundred and two year business, a credit to this great community.

The public benefited by that? How can you find on this evidence that the public was anything but injured by ending that service, with all peripheral service. Everything we do is peripheral, doesn't amount to anything; it is peanuts.

It was service rendered to the public, and when we were stopped from doing it, it ended. Of course, the public was injured. The public has been injured at every step of the way.

Of course, we went out and got evidence. How else do you try lawsuits? What did Judge Thompson do? He sends somebody over there to get these people out
2304 of the railroad stations; their boss is going down and getting them to come in here and testify. This fellow telling you he can remember five years ago that he wore a brown suit and a brown pair of shoes. Can you remember five years ago what you wore or what you ate or what you did? I can't. There isn't anybody in this courtroom that can.

He says that is the kind of cross examination you use when you haven't anything else to use. It was pretty good cross examination, if I may say so myself, when a witness gets up there and tells you people that he remembers what suit he wore five years ago on May 20th—

By Mr. Thompson: December 20th.

By Mr. McConnell: (Continuing) Or December 20th. You see, I didn't even remember the dates, and I have got a pretty good memory, and he can remember the shoes that he wore and the suit that he wore,

I don't think I should be criticized for that cross examination because you people know that he couldn't possibly remember.

The other fellow was running two blocks out in the yards, squinting out through his little cubicle up
2305 there every minute of the day. He couldn't have been.

Nobody denied Mr. Krock—the crack in the crock of Mr. Thompson's jovial remark—nobody denied his testimony who was there on the day that you could believe.

He made a memorandum of it. He had a reason to observe it.—

By the Court: Three minutes time, Mr. McConnell.

By Mr. McConnell: As Mr. Thompson said, he was getting evidence. He couldn't have a better reason to be accurate. Oh, yes, we blackjacked the railroads.

Now, let's get to this big syndicate. Parmelee Company is one appendage to it. I don't care how large it is. I don't care how much money Mr. Markin has. He isn't on trial here. He is trying to fight a lawsuit and a good one and the issue here—and that was brought in here to prejudice you people, to make you think that we are the big octopus. How ridiculous, against all of these 21 railroads we are the big octopus, with a little transfer service going back and forth between these stations.

2306 There is no evidence that we have a monopoly of the transfer in this town or ever had it. The best evidence that we didn't have it, and this I insist is incontrovertible, nobody can ever deny it, is that without any preparation, without any consultation, without any if, and or but, and not even with a fair hearing, without even giving us the benefit of viewing our bid on the merits, they discontinue our service and take Keeshin's.

How better could you ever disprove a monopoly? And if that is a monopoly, it is the worst monopoly I ever heard of. We didn't have anything remotely resembling a monopoly. They could come in and bid against us any time, and they did. They solicited bids, and they got them.

This big blackjacking — their own railway agency which they own, one of their appendages to their octopus, the Railway Express Agency, they couldn't meet our bid that we were then charging $1.22. They couldn't meet it. They wanted 15 per cent guaranteed profit.

Some story of blackjacking, I would say. But old Judge Thompson gets up here and he just waves these
2307 claims right out of court; just nothing to them.

Then he says that there wasn't anything about this pickup and delivery service. Well, it is right in the contract. If you take the contract and read it, you will find out about it. The price is in there on schedule, and it is fixed, just like I told you it was. You will read it. It is all there.

By the Court: Your time is up.

By Mr. McConnell: I don't know anything more that I can tell you about this case. I have tried to present it in the best way I know under the limitations imposed upon me.

I said at the beginning, and I say now, and I have said it all the way through, that this is a case of great, great public importance because until we get past this hurdle, we can't try an anti-trust case in this court, and that is the biggest issue ever presented to a jury in this Cook County of Illinois, in its history, believe me.

You hold the key to our prison. Only you can unlock it, and we have given you the evidence to do it. We have given it to you beyond question. We have given you
2308 uncontradicted evidence that this service was impaired, that there was less of it when they got the contract, and the public had to be injured.

2309 There couldn't anything else happen but the public be injured, and I ask you with all the sincerity that I can muster to consider what effect your decision is going to have, not only on the litigants in this case or the money involved, but what is going to happen if this can be put as a barrier to an anti-trust suit as we have in this case.

I thank you very, very much.

And Thereupon The Court Charged The Jury As Follows:

By the Court: I am now going to read to you ladies and gentlemen the instructions in writing. You will take them with you into your jury room, and you may refer to them if you wish, because I can't possibly expect you to remember them as I read them to you.

The Court instructs the jury that preliminary to your being accepted and sworn in as jurors in this case you were examined by the Court and counsel as to your competence and qualifications to act as jurors in this case.

As a part of such examination each of you 2310 answered all questions asked of you. Your answers showed that you are competent and qualified to act as jurors in this case, and the parties to this suit accepted you as jurors on the faith of your answers. The answers you then made to said questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion or sympathy are as binding upon you now as they were then and should so remain until you are finally discharged from further consideration of this case.

It would be improper for you to disregard the answers which rendered you competent as jurors.

You are instructed that while it is the duty of the Court to declare the law and the duty of the jury to be governed by that law in its consideration of the evidence, it is on the other hand your exclusive province and right to pass upon the facts in the case and upon the credibility of witnesses, that is whether or not the testimony of the various witnesses should be believed.

With those functions the Court has nothing whatsoever to say other than to endeavor to see that only proper

evidence is permitted to appear before the jury for its consideration.

2311 It is not the intention of the Court to influence in any way your judgment as to the facts in this case. If, therefore, during the progress of the trial you have gathered any impression from anything which the Court may have asked of a witness or may have stated in its rulings or in the course of discussion of or with counsel with respect to the facts in this case or as to the weight of any evidence or as to the credibility of any witness, you should disregard that impression and base your verdict entirely upon your own judgment as to what the evidence established.

2312 This is a civil suit, and in the determination of your verdict you are the sole judges of the facts. You must take the law from the Court as laid down in these instructions. Every instruction read to you is given by the Court, and it is your duty under your oath as jurors to know what the instructions are before you bring in your verdict and to honestly and impartially apply to the evidence the law as laid down in these instructions.

These instructions constitute one connected body and series and should be so regarded and treated by you. You must not pick out any one instruction and disregard others, but you must take all the instructions together as the law.

You are the judges of the credibility of witnesses and of the weight to be given to the testimony of each. You must receive and consider the testimony of each witness in the light of all the evidence applying thereto the law as given to you in these instructions. As to each witness, in determining the weight to be given his testimony, you have a right to consider his appearance on the stand, his manner of testifying, his apparent candor and

fairness, his interest or lack of interest in the
2313 result of this case, his apparent intelligence or lack of intelligence and all the other facts and circumstances proved on the trial.

If the jury believe from the evidence that any witness in this case has knowingly and willfully sworn falsely on the trial to any material matter material to the issues in this case, then the jury are at liberty to disregard the entire testimony of such witness except in so far as it has been corroborated by other credible evidence or by facts and circumstances proved on the trial.

You are instructed that the Court has limited the issue to be tried before you to the public injury. That is to say whether or not the public has sustained or suffered injury as a result of the award of the 1955 transfer contract to the defendant Railroad Transfer Service, Inc. or by failing to award such a contract to plaintiff Parmelee Transportation Company.

The Court instructs the jury that on the question of public injury you may consider, among other things, the comparative service provided by Parmelee and the Railroad Transfer Service, Inc. in connection with the interstation of passengers and baggage.

2314 The plaintiff is required to prove its case by the greater weight of the evidence, and if it has not so proved its case by a preponderance or greater weight of the evidence, or if the evidence is evenly balanced so that you are unable to say on which side is the greater weight of the evidence, or if the greater weight of the evidence is in favor of the defendants, then in any such event your verdict should be in favor of the defendants.

The preponderance of the evidence in the case is not alone determined by the number of witnesses testifying to a particular fact or state of facts.

In determining on which side the preponderance of evidence is, the jury should take into consideration the number of witnesses testifying to a particular fact or state of facts and they should also take into consideration so far as shown by the evidence the opportunities of the several witnesses for seeing or knowing the things about which they testify, their conduct and demeanor while testifying, their interest or lack of interest if any in the result of the suit, the probability or improbability of the truth of their several statements, in view of all the
2315 evidence, facts and circumstances, proved on the trial, and from all these facts and circumstances and a full consideration of all the evidence, determine upon which side is the greater weight or preponderance of the evidence.

2316 The Court has limited the issue before you to public injury. Other issues must not be considered by you. All questions, remarks, innuendos and insinuations by counsel which have been ruled out and stricken from the record, regardless of how often they have been repeated, are to be disregarded by you.

You are further instructed that none of the parties hereto, either plaintiff or defendants or their respective stockholders or officers as such or in such capacities are part of the public to be considered by you in your deliberations as to public injury.

The Court instructs the jury that plaintiff must prove its case by a preponderance or greater weight of the evidence, and if the plaintiff does not prove its case by a preponderance or greater weight of the evidence, you should find the issues in this cause in favor of the defendants.

Your verdict in this case must be based upon the evidence. You must not speculate or conjecture or guess as to the facts which plaintiff is required to prove in this

case. If your finding as to the facts which plaintiff
2317 is required to prove in this case can be made only upon conjecture or speculation or guess as to what the facts are, then you must find the issues in favor of the defendants.

You are instructed that this case must be decided upon the evidence under the instructions of the Court and not upon the statements or implications of counsel outside of the evidence and unsupported by evidence. You are not to consider any document, any documentary evidence which has been offered but which has not been admitted by the Court, nor are you to consider any answers made by witnesses which have been made and stricken out by the Court.

You are to decide the issues solely upon the evidence which has been admitted by the Court, finding from the evidence the facts and applying to the facts the instructions as to the law given by the Court.

The evidence and the law alone must govern your verdict.

You are instructed that if you believe from the evi-
dence that the railroad companies have paid and are
2318 paying for the service rendered by defendant, Railroad Transfer Service, Inc., and that they have redeemed the transfer service coupons collected by Railroad Transfer Service, Inc., out of their own funds, if you further believe from the evidence that said payments have not resulted in an increase of rates to the passengers, then and in that event such payment in the redemption of said coupons are not a proper element in the determination of the issue herein.

You are further instructed that as a matter of law an exclusive contract with one transfer company executed jointly by the Chicago Terminal Railroads does not constitute a violation of the Anti-trust Laws. In your con-

sideration of the issue of whether there was a public injury, you are not to consider any issue of the validity of that contract.

The Court further instructs you that under your oaths you should not allow sympathy or prejudice to influence you in the least in finding your verdict in this case. In your deliberations you should not be influenced by anything other than the law and the evidence in the case.

2319 You are instructed that in order to answer the special interrogatory submitted to you, you must determine whether the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company to perform the interstation transfer service in Chicago was reasonably calculated to prejudice the public interest and whether by reason of that selection there has been an appreciable lessening of service to the public or the public has been deprived of a service of over-all superiority.

For your verdict you will answer the following interrogatory yes or no and sign your verdict:

> "Has the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public?"

I give you one form of verdict which reads:

> "We the jury, answer the interrogatory as follows: Has the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company

2320 to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public?"

The answer is yes or no.

Then you will sign your names, as I tell you.

I want to say to you folks that I have enjoyed your service here. I am grateful for your kindness and your service and your cooperation. You will now retire. You will have all the exhibits with you. You will have these instructions with you.

Your first official act will be your election of a foreman who will preside over your deliberations, and when you will have elected that foreman and when you have reached the answer, the foreman will please sign his or her name first on the first line and the rest of you will please sign your names next following after the foreman.

The two alternate jurors may now be excused. Thank you very kindly for coming in and helping us. You are very kind.

(The two alternate jurors were thereupon excused.)

2321 By the Court: (Continuing) Before you get into your jury deliberations, you can relax, wash up, and sit around. You will have dinner served to you under my deputy marshal. If you want something, he will be glad to serve you and take care of you. And again thanks a million.

Swear in the staff.

(The Marshal was thereupon duly sworn.)

(Thereupon the jury retired to consider of their verdict.)

(The following proceedings were thereupon had outside the presence and hearing of the jury:

By the Court: We will be in recess. The lawyers may go back to their respective offices. My bailiff or my Marshal will call them if something happens. I will be available. I will be around somewhere where I can be reached.

I don't want a sealed verdict here, because it is too important a matter, so somewhere around ten o'clock or ten-thirty we will decide as to what we are going to do next, but until then you be in your offices or leave your numbers wherever you can and we will reach you,
2322 and nothing will happen until you get here or somebody from your office.

(And thereupon at 5:20 o'clock p.m. of said day, May 10, 1960, a recess herein was taken until 10:00 o'clock p.m. of May 10, 1960.)

2323 • • (Caption—No. 56 C 323) • •

Chicago, Illinois,
Tuesday, May 10, 1960,
10:00 o'clock p.m.

Court convened pursuant to an adjournment.

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the Plaintiff,

Mr. Albert J. Meserow,
on behalf of the Defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the Defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the Defendant
The New York Central Railroad Company;

2324 Mr. Philip W. Tone,
on behalf of defendant
railroads.

2325 And thereupon the following further proceedings were had herein:—

(And thereupon the following proceedings were had herein, in open court, in the presence and hearing of the jury:)

By the Court: Have you folks reached a verdict?

By the Jurors: Yes.

By the Court: Please hand it to the Marshal.

By the Clerk: "Verdict: We, the jury, answer the interrogatory as follows:

"Has the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public?"

The answer is "No," signed by the jurors.

By the Court: Thank you very kindly. You have been a grand jury, and I appreciate it very much and hope to see you some day again. Have a nice evening and thank you. You are excused from further service.

(And thereupon the following proceedings were
2326 had outside the presence and hearing of the jury)

By the Court: I am now going to hold Mr. McConnell and Mr. Freeman in contempt of court, and I will make it returnable two weeks from today—direct contempt.

By Mr. McConnell: Your Honor, I don't know whether I have any right to ask this or not.

By the Court: Beg pardon?

By Mr. McConnell: I have transportation for Europe next week.

By the Court: I will wait until you come back. I am not going to interfere. It is not that urgent, but you cannot do what you did in this case, neither of you. You made direct attacks on the Court unwarrantedly, and the record shows it.

By Mr. Freeman: The record doesn't show that.

By Mr. McConnell: I would ask that it go over until I get back.

By the Court: Yes; I am going to let it go over, and I am going to put it over to the same time I sign the Decree I have asked for. There is no emergency about it, but I am going to make the record.

By the Clerk: Do we enter the verdict and enter judgment on the verdict?

By the Court: Judgment on the verdict.

2327 By Mr. Meserow: If your Honor please, with respect to the two defendants' counterclaims, can we have an order entered putting those over to the fall?

By the Court: That will be continued to the same time when I sign the final Decree dismissing the rest of the issue that I recited several times for the record. I want a complete record so the Court of Appeals will have it on all issues, both on this one and on the others.

By Mr. Meserow: Is your Honor setting a date for the signing of the Decree?

By the Court: When do you come back?

By Mr. McConnell: The 28th of June.

By the Court: All right; make it on the 30th of June.

By Mr. McConnell: Yes, your Honor.

By the Court: That will be the order.

(Whereupon an adjournment was taken in the hearing of the above-entitled case to the 30th day of June, A. D., 1960, at the hour of 10:00 o'clock a. m.)

2328 United States of America
Northern District of Illinois
Eastern Division

IN THE UNTED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from
2329 1 to 2327 in a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the trial of the above-entitled cause, on April 21, 22, 25, 26, 27, 28, 29, and May 2, 3, 4, 5, 6, 9, 10, 1960, before the Honorable Julius H. Miner, Judge of said Court, and a jury.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

May 19, 1960

2330 * * (Caption—No. 56 C 323) * *

Chicago, Illinois,
Thursday, June 30, 1960,
10:00 o'clock p. m.

Court convened pursuant to an adjournment (from the last prior hearing herein on May 10, 1960).

Present:

Mr. Thomas C. McConnell,
Mr. Francis J. McConnell,
Mr. Lee A. Freeman,
Mr. Herbert B. Lazarus,
on behalf of the plaintiff;

Mr. Albert J. Meserow,
on behalf of the defendants
John L. Keeshin and Railroad
Transfer Service, Inc.;

Mr. Joseph C. Owens,
on behalf of the defendant
Hugh W. Cross;

Mr. Martin J. Keating,
on behalf of the defendant
The New York Central Rail-
road Company;

Mr. Floyd Thompson,
Mr. Philip W. Tone,
on behalf of defendant Rail-
roads.

2331 And thereupon the following proceedings were had herein:—

By the Clerk: 56 C 323, Parmelee Transportation Company v. John L. Keeshin, et al., for entry of judgment on the verdict and all the issues in the cause, and for imposition of sentence of Mr. Thomas C. McConnell and Mr. Lee A. Freeman for direct contempt of court.

By the Court: First, I have prepared a 35-page opinion in the Parmelee case, and I am filing it now. It is a memorandum opinion, and I have copies here. Here are two for the plaintiff, and I have only one for the defendants. I appreciate I may have to make copies if I get any more demands.

I appreciate somebody can make stencil copies, so let me do it. I will make them from the original. I think I have one extra copy in my chambers.

By Mr. Thompson: As far as the defendants are concerned, we will make our own unless you do have them.

By the Court: I will make probably a hundred copies and you can have as many as you need, so let me do it so everybody can have them and not duplicate
2332 it.

Next will be the final judgment—

By Mr. Thompson: We submitted a draft.

By the Court: You submitted a draft and I made some changes.

By Mr. Thompson: We submitted a draft and served it on the others.

By the Court: I made some important changes in there in so far, primarily, that my judgment was that your order provided for dismissal of the complaint in its entirety, and I limited it to any and all issues, if any there be, independent of the issues adjudicated by the jury.

I am now signing it.

By Mr. Thompson: We didn't provide for dismissal of the complaint. We provided only for the equitable issues. We provided for judgment on the law.

By the Court: I changed that because I felt that ought to be clear. Here is one copy of the final judgment for the plaintiff and a copy for the defendants.

On the question of the contempt proceeding—Did I give you a copy of the original final judgment?
2333 By the Clerk: I have the original here.

By the Court: I have yours, on which I made my changes.

On the question of contempt, I have prepared an order which I am now signing. I will give you each copies.

I am sentencing each of the defendants to ten days in the County Jail, with this proviso: I have no ill feeling in the matter. The court was seriously hurt in this matter on the procedure. The specifications are in here, and I will read them if you want me to.

I will enter my own motion for suspension of it, if you folks will decide to enter or file a petition of retraction and apology.

I have no malice in my heart. I cannot permit this to go unchallenged with all the seriousness at my command. I don't want the punishment to be unduly, but the court is entitled to that much consideration, and you must determine between now—I will give you plenty of time. I will continue it until court's reopening, unless you have other plans. I have no objection to between now and September, say the 15th or latter part of September, you can 2334 decide if you want to.

By Mr. Thomas C. McConnell: That is perfectly all right.

By the Court: If you want to file the petition or take an appeal.

By Mr. McConnell: So there is no final order entered this morning?

By the Court: I have got to enter it.

By Mr. Freeman: You are suspending the sentence.

By the Court: I will enter a motion to vacate and there will be no other action taken on it until you decide which way you want to follow it.

By Mr. McConnell: That is perfectly all right.

By the Court: Just one second. Did I give you copies of it?

By Mr. Freeman: No, you did not. We ought to have two.

By the Court: I am signing the original order now. I don't mean to be technical about it. If anything comes up in your minds that needs clarification in conjunction with and in conformity with my plan of doing it, I will come down at any time and protect the record on it completely.

By Mr. McConnell: My only question about it—
2335 Well—

By the Court: Pardon me?

By Mr. McConnell: I say my only question about it is whether it is a final order entered today.

By the Court: I am entering a final order today with a motion to vacate. It is the court's order. If you want to make your own motion, I will be glad to entertain that, but I am doing that and I am giving you a lot of consideration.

I don't want to—the court has got to protect itself against the charges, the specifications that I have in there. There are four against Mr. Freeman and three against you, specific with reference to the pages. All in all, I would rather have the apology than I would the sentence, much rather.

All right. Call the next case.

Did I give you a copy? Do you want a copy of that, gentlemen?

By Mr. McConnell: Can we have five days in which to file objections to the order on the main case?

By the Court: Oh, yes.

By Mr. McConnell: I think the rules allow it.

By the Court: If you want to do that, whatever
2336 you want to do is O. K. with me. You can have the same order provide five days to file objections, to perfect your record, and take your time on determining what course you want to follow.

Five minutes recess, please.

2337 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I hereby certify that the above and foregoing transcript comprising pages numbered consecutively from 1 to 7 is a full, true and accurate transcript of the original shorthand notes of all the proceedings had upon the hearing of the above-entitled cause, on June 30, 1960, before the Honorable Julius H. Miner, Judge of said Court.

/s/ Roy E. Fuller
Roy E. Fuller
Official Court Reporter
United States District Court
Northern District of Illinois

June 30, 1960

762

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *
(May 3, 1960)

This being the day to which this cause was continued for further trial the parties come by their attorneys and the jury also come and the trial proceeds, whereupon defendants' motion that the Court direct the jury to return a finding for the defendants at the close of plaintiff's case is overruled and during the hearing of evidence for the defendants the hour of adjournment having arrived it is

Ordered that the cause be and hereby is continued until

May 4, 1960 at 10:00 a.m., and that the jury be and hereby are permitted to separate until that date and hour.

763 May 10, 1960: Filed Given Instructions

799 VERDICT

We the jury answer the interrogatory as follows:

Has the selection of Railroad Transfer Service, Inc. rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public? No.

800

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

This cause being called for further trial the parties again come by their attorneys and the jury also come, and the motion of defendants for a directed verdict and for entry of judgment in their favor at the close of all the evidence is overruled and ruling thereon reserved, and the motion of plaintiff for a directed verdict at the close of all the evidence is overruled, also, and ruling thereon reserved by the Court, and it is

Ordered that counsel for defendants prepare proposed findings of fact and conclusions of law, whereupon
801 the trial proceeds and the jury having now heard all the evidence adduced for the parties, the arguments of counsel and instructions of the Court the alternate jurors are discharged from further service herein and the remaining jurors retire to their rooms with sworn marshals to consider of their verdict and during their absence it is

Ordered that the United States Marshall furnish one meal for the twelve jurors and one deputy marshal in

charge thereof, and afterward the jury return into open Court and render their verdict and on their oath do say:

"We, the jury answer the interrogatory as follows:

Has the selection of Railroad Transfer Service, Inc. rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public? No"

Therefore, it is

Ordered And Adjudged that the plaintiff take nothing from the defendants in this cause on the issue of public injury, and that the defendants recover from the plaintiff their costs and charges in that behalf expended, and it is

Further Ordered that the matter of the two defendants' counterclaims and the entry of the final decree dismissing the remainder of the issue be and they hereby are continued to June 30, 1960 at 10:00 A.M., and it is

Further Ordered that Mr. Thomas C. McConnell and Mr. Lee A. Freeman be and they hereby are held in direct contempt of court and that imposition of sentence be and it hereby is continued to June 30, 1960 at 10:00 A.M.

802

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

(May 12, 1960)

On the Court's own motion it is

Ordered that the orders heretofore entered herein on May 10, 1960, be and they hereby are amended to read and rule as follows:

803 This cause being called for further trial the parties again come by their attorneys and the jury also come, and the motion of defendants for a directed verdict and for the entry of judgment in their favor, at the close of all the evidence, is overruled, and the motion of plaintiff for

a directed verdict in its favor, at the close of all the evidence, is also overruled, and it is

Ordered that counsel for the defendants prepare proposed findings of fact and conclusions of law, whereupon the trial proceeds and the jury having now heard all the evidence adduced for the parties, the arguments of counsel and instructions of the Court the alternate jurors are discharged from further service herein and the remaining jurors retire to their rooms with sworn marshal to consider of their verdict and during their absence it is

Ordered that the United States Marshal furnish one meal for the twelve jurors and one deputy marshal in charge thereof, and afterward the jury return into open court and render their verdict and on their oath do say:

> "We the jury answer the interrogatory as follows: Has the selection of Railroad Transfer Service, Inc. rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public? No"

Whereupon, it is

Ordered that the matter of the entry of judgment on the verdict and on all issues in the cause be and it hereby is continued to June 30, 1960, at 10:00 A. M., the Court holding Mr. Thomas C. McConnell and Mr. Lee A. Freeman in direct contempt of court and it is

Further Ordered that imposition of sentence in re said contempt be and it hereby is continued to June 30, 1960 at 10:00 A. M.

804

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

MEMORANDUM OPINION

(June 30, 1960)

This is an action for an alleged violation of Sections 1 and 2 of the Sherman Act (15 U.S.C., §§ 1 and 2). Plaintiff is Parmelee Transportation Company, which performed the interstation transfer of passengers and their baggage between and among Chicago's eight railroad stations for many years prior to October 1, 1955. The defendants are (a) John L. Keeshin, who was a successful competitor of Parmelee for a new contract to perform the service, commencing on October 1, 1955, (b) Keeshin's company, Railroad Transfer Service, Inc., which he organized to perform the service after he had been notified he would receive the contract, (c) Hugh W. Cross, formerly a member of the Interstate Commerce Commission, 805 (d) the six railroads which comprised a committee chosen by the 21 railroads having passenger terminals in Chicago to consider the transfer problem and make recommendations to the railroads with respect to its solution, and (e) the presidents of four of the six railroads.

The complaint alleges, and the evidence shows, that 21 railroads operate passenger service terminating in Chicago at one of eight railroad stations. No railroad provides passenger service through Chicago. Thus, it is necessary for any through passenger arriving in Chicago by rail to transfer from one train to another and usually from one station to another. In order to provide a complete through service, the railroads provide transfer from one station to another for through passengers and their baggage, the outgoing line paying the transfer charge.

The evidence shows that early in 1954, as a result of a demand by Parmelee for a 19% increase in the coupon charge, the 21 railroads designated a committee of six of their number "to make a study of the transfer situation, including various types of operation that can be devised to definitely meet the needs of the public without increasing the cost to the railroads; report and recommendation to be made to Chicago terminal lines for consideration at a later meeting." (Proceedings of Meet-
806 ing, Chicago Terminal Lines, Jan. 29, 1954.) The committee chosen consisted of the six railroad defendants, being respectively the principal lines using the major terminals.

The evidence also shows that the committee representatives approached a substantial number of persons and firms which they thought were qualified and might be interested in rendering the transfer service, including John L. Keeshin, a substantial motor truck operator. The committee held meetings with the various prospective bidders. Eventually, by reason of lack of interest on the part of other bidders or their unwillingness to provide the kind of service the railroads thought was required, the field was narrowed to Parmelee and Keeshin.

Keeshin's initial written bid was submitted on December 15, 1954. He proposed to render the service during the first year for $1.20 per coupon, which was 2¢ per coupon less than Parmelee was then charging. (Parmelee had been granted an increase to $1.22 from the $1.05 rate that was in effect at the beginning of that year, following the demand for rate increase referred to above.) Keeshin proposed that in the subsequent years his coupon charge would be increased 1¢ for each 5¢ per hour wage increase he was required to grant his employees. To permit him to amortize the investment necessary to entry into the
807 business, he requested a five-year contract. On January 15, 1955, following an agreement covering wages

of drivers for a three year period, Keeshin modified his proposal by placing ceilings of $1.22 and $1.23 per coupon in effect for the second and third years, respectively. Keeshin also proposed, in his original proposal, to provide new equipment, to replace his passenger equipment every thirty months, to air condition his passenger equipment and to dispatch his vehicles by means of two-way radios. He also agreed to make his books available for inspection by the railroads at any time.

On March 19, 1955, Parmelee submitted its proposal to the committee Parmelee proposed to reduce its rate for the first year from the $1.22 it was then charging to $1.20, the same figure Keeshin had offered; to increase the rate in subsequent years 1¢ for each 3¢ wage increase Parmelee was required to pay its employees; and, further, to increase the rate in subsequent years 1¢ for each 1% decrease in the number of passengers carried. Parmelee requested an exclusive six and one-half year contract, in order to permit it to amortize its anticipated investment in new equipment.

On April 6, 1955, Keeshin wrote a letter amplifying his previous proposal and stating that, while he recommended that trailers be used to handle baggage and 808 that the railroads have their personnel load and unload stationed trailers as the more economical arrangement for them, he would be willing to continue the baggage handling system which had been in operation for many years with Parmelee. His letter also amplified various portions of his original proposal, but added nothing new in substance, except the assurance that his coupon charge was firm regardless of volume of passenger business.

On May 19, 1955, the committee met with Keeshin and Parmelee officials separately to discuss the respective proposals. Parmelee then withdrew its request that the

railroads increase the coupon charge 1¢ for each 1% decrease in passenger volume. However, Parmelee did not at that time put any ceiling on its charge for the second and third years, other than a ceiling of $1.25, which was applicable to each year of the contract period subsequent to the first. Parmelee did not offer air conditioning, radio dispatching or any schedule for equipment replacement, and declined to let the railroads see its books.

On May 20, 1955, Morris Markin, Chairman of the Board of Directors and principal negotiator for Parmelee, telephoned the chairman of the railroad committee, and advised him that Parmelee would place the following ceilings on its coupon charge: first year—$1.20; second year—
809 $1.22; third year—$1.23; fourth year—$1.24; and balance of contract $1.25. Markin confirmed this change by letter.

The committee met on June 3, 1955, and unanimously voted to recommend to the 21 railroads that the proposal of Keeshin be accepted. On June 13, the 21 railroads approved the recommendation. Parmelee and Keeshin were notified of the railroads' decision.

Subsequently, Keeshin formed defendant, Railroad Transfer Service, Inc., for the purpose of performing the transfer service and the railroads negotiated and entered into a five-year written contract with that company for the performance of the service, operations under the contract to commence October 1, 1955. Railroad Transfer Service has been performing the transfer service since that date.

The foregoing facts are undisputed. The dispute concerns the means by which the railroads were induced to reach their decision to award the transfer contract to Keeshin rather than to Parmelee.

Parmelee alleges that Keeshin induced Cross, who was then a member of the Interstate Commerce Commission,

to "influence, induce and persuade" the defendant railroads, and through them the 21 Chicago terminal lines,
810 to accept Keeshin's proposal for a five year exclusive contract instead of Parmelee's proposal for a six and one-half year exclusive contract. (Complaint, par. 31)

These allegations are denied by all the defendants. The defendants contend that the proposals of Keeshin and Parmelee were considered on their merits and that the Keeshin proposal was selected by the railroads in the exercise of their sound business judgment.

Plaintiff's allegations of public injury, apart from the assertion that Cross was disabled as a result of his alleged undertaking from adequately performing his duties as a member of the Interstate Commerce Commission (Complaint, par. 34(i)), are that the services performed by Railroad Transfer are "more costly to said railroads and less extensive and valuable than the services previously performed by plaintiff and which plaintiff had offered to continue to perform" (par. 33(f) and (i), 34 (d)), and that the travelling public will "ultimately" be affected by the alleged increased cost and will be "prejudicially" affected by the alleged decrease in the "quality or extent" of the service. (Complaint, par. 19) These allegations of public injury are denied by the defendants.

Plaintiff also alleges that it has been damaged by being deprived of profits in the sum of $6,400,000 "it would have earned" had it been awarded the contract. (Complaint,
811 par. 35.) Plaintiff seeks a judgment in this amount trebled, or in the amount of $19,200,000, and seeks an injunction against performance of the contract or continuation of the alleged conspiracy.

In addition to the foregoing allegations of ultimate fact, Parmelee alleges that the acts of the defendants constituted an

"unlawful combination, conspiracy and concert of action to eliminate all competition for contracts . . . to transport interstate passengers and their baggage . . ., to eliminate all competition for the rendition of pick-up and delivery services, to foreclose all future competition for such contracts and services, and to restrain and monopolize the aforesaid interstate commerce in violation of §§ 1 and 2 of the Sherman Act." (Par. 31)

Soon after the action was commenced, the defendants (with the exception of defendant Cross, who answered) filed motions to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted. This motion was considered on briefs by Judge Philip L. Sullivan, to whom the case was then assigned, and overruled by him. The defendants who had filed motions then answered. Extensive discovery proceedings followed, during which thousands of documents were produced for inspection and thousands of pages of depositions were taken.

After discovery had been completed and after the first pretrial conference had been held before Judge Rob-
812 son, to whom the case was then assigned, plaintiff moved for a partial summary judgment holding the exclusive five-year contract which had been awarded Keeshin unlawful on the ground that it constituted, *per se*, a violation of the antitrust laws. This motion was considered by me on briefs, after the case was placed on my docket, and was overruled. The case was then set for trial.

In preparation for the trial, I reviewed the pleadings and briefs and other papers in the file and also certain pertinent decisions handed down after the briefs on the motion to dismiss were written. As a result of this review, I concluded that this might be an appropriate case for the operation of this Court's Rule 21, which implements

Federal Rule 42(b), *i.e.*, in which to order a separate trial of the separate issue of public injury. See *Marks Food Corp.* v. *Barbara Ann Baking Co.*, 274 F. 2d 934, 936 (9th Cir. 1960).

Shortly before the trial, the Court orally announced its views to the parties and asked that the parties present arguments to the Court on the question of whether a separate trial of the issue of public injury should be held. Both sides favored immediate trial of the entire case. Plaintiff opposed the separation on legal grounds, arguing that it was unnecessary for plaintiff to prove public injury as such; and defendants opposed the proposal on various practical grounds and on the ground that they desired to be vindicated by a trial on the merits. Not-813 withstanding the opposition of all parties, the Court concluded that it was in the interest of efficient judicial administration and in the interest of justice to try separately the issue of public injury.

Pursuant to the Court's order a jury was selected and impaneled to try the issue of public injury. Plaintiff and defendants introduced evidence on that issue. Plaintiff's position throughout the trial was that public injury was inferable as a matter of law from proof of a violation of the antitrust laws, that it was only necessary for plaintiff to prove a violation and that it was unnecessary to prove public injury as a separate element. On this theory, plaintiff made offers of proof of its entire case, including the evidence it claimed established a violation of the antitrust laws and some evidence in support of its allegations of damages.

Defendants severally moved for a directed verdict at the close of plaintiff's evidence, and their motions were overruled. Both plaintiff and defendants moved for directed verdicts at the close of all the evidence, and these motions

were overruled and the Court at the same time reserved its rulings. The issue of public injury was submitted to the jury by a special verdict which asked the jury to determine whether the award of the contract to Kee-
814 shin rather than Parmelee had resulted in injury to the public. The jury answered the question in the negative.

Public Injury

Unless a *per se* violation of the antitrust law is established, plaintiff is required to prove that the public at large has suffered or will suffer economic harm as a result of the alleged violation, *i.e.*, that there has been an appreciable lessening in the service or the availability of the products to the public or that the public has been deprived of a product or service of over-all superiority. *Radiant Burners, Inc.* v. *Peoples Gas, Light & Coke Co.*, 273 F. 2d 196, 200 (7th Cir. 1960), cert. granted June 6, 1960 (in which the court viewed the complaint as not alleging a *per se* violation); *Reliable Volkswagen Sales and Service Co., Inc.* v. *World-Wide Automobile Corp.*, C.C.H. Trade Reg. Serv., para. 69,644 (D. N.J. 1960); *United States* v. *Bitz*, 179 F. Supp. 80 (S.D. N.Y. 1959).

For the reasons stated below in this opinion, the Court has concluded that neither the complaint nor the evidence and offers of proof, taking the latter as proved, charge or establish prima facie a *per se* violation of the antitrust laws. This case does not involve a boycott, as did *Klor's* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1958).
815 This appears not only from the complaint but from the evidence offered by plaintiff. Proceeding on the theory that proof of a violation of the antitrust laws without more, establishes public injury, plaintiff offered its evidence as to the conduct alleged to be a violation. This offered evidence, viewed in the light most favorable to

plaintiff, does not establish, prima facie, a boycott or any other *per se* violation of the antitrust laws.

At the most it tends to prove that the railroads yielded to Cross' persuasions that Keeshin be selected as the transfer agent. There is no evidence or offer tending to show any agreement not to allow Parmelee to bid or not to consider Parmelee's bid or not to deal with Parmelee, except as any exclusive contract necessarily implies agreement not to contract with others.

Plaintiff, having failed to show, prima facie, a *per se* violation, was required to allege and prove public injury, even assuming the complaint charged a restraint of trade which, upon application of the rule of reason, might be held unlawful.

The Court finds that the public injury element, as specifically pleaded in the complaint herein, is an esssential part of plaintiff's case in its action for treble damages for alleged violation of the antitrust laws, and that there is no violation by defendants unless their conduct,
816 under applicable principles of law, is adverse to the public interest.

Our courts have sustained exclusive and joint contracts upon the basis that the "combination" involved is an economically productive group, the formation of which promotes trade in the public interest (and, indeed, whose objectives may be accomplished in no other manner), or upon the ground that its lawful main objective justifies the creation of a joint venture which, as a single entity, cannot conspire with itself. (Cf. *City of Chicago* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 357 U.S. 77 (1958), in which both the majority and the minority of the Court recognized the right of railroads to act as a group in selecting a transfer operator to provide inter-station service. *Id.* at 88-89.) Where there can be but one successful bidder for a contract to serve a joint venture, the losers will

not be heard to cry "conspiratorial exclusion." Many economically beneficial projects would be discouraged.

Joint or group action may be justifiable also in a context which is different from that of ordinary commercial matters. See *U. S.* v. *Oregon State Medical Society*, 343 U.S. 326, 336 (1952); *Riggall* v. *Washington County Medical Society*, 249 F. 2d 266 (8th Cir. 1957), cert. den., 355 U.S. 954 (1958).

In *Radiant Burners, Inc.* v. *Peoples Gas, Light & Coke Co.*, 273 F. 2d 196, 200 (7th Cir. 1916), cert. granted
817 June 6, 1960, the Court reviewed many leading cases and concluded:

> "It is our opinion that the complaint also fails to allege such injury to the public as is essential to plaintiff's right to maintain its action. In the absence of a *per se* violation the Sherman Act protects the individual injured competitor and affords him relief, but only under circumstances where there is such general injury to the competitive process that the public at large suffers economic harm. Cf. *Rogers* v. *Douglas Tobacco Board of Trade, Inc.*, 5 Cir., 266 F. 2d 636. The primary purpose of the statute is to protect the public from monopoly."

In *Klor's* v. *Broadway-Hale Stores, Inc., et al.*, 359 U.S. 207, 210 (1958), wherein the defendants, based upon affidavits, sought and procured summary judgment and dismissal of the complaint for failure to state a cause of action, the Court held:

> "We think Klor's allegations clearly show one type of trade restraint and public harm the Sherman Act forbids, and that defendants' affidavits provide no defense to the charges."

It reversed the Court of Appeals for the Ninth Circuit which affirmed the summary judgment, 255 F. 2d 214, and held that the required public injury was missing since "there was no charge or proof that by any act of defendants the price, quantity, or quality offered the public was

affected, nor that there was any intent or purpose to effect a change in, or an influence on, prices, quantity, or quality . . . " Unlike that case, which was decided on the complaint and affidavits, the case at bar was tried before
818 a jury and the final judgment is entered upon that jury verdict and a complete offer of proof.

In the light of these principles, Section 4 of the Clayton Act (15 U.S.C.A. § 15), authorizing suits for treble damages by "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws," places upon the treble damage plaintiff the burden of establishing not merely his own damage but the actual or presumed harm to the public which is a prerequisite to a finding of Sherman Act violation by the defendant. In the latter respect, the allegations of a private claimant are no different than those required in a proceeding brought by the Government. *Radovich* v. *National Football League*, 352 U.S. 445 (1957).

A complaint on its face may appear to allege price fixing, but upon close analysis of the proof it may be discovered that the conduct of defendants with respect to price may not spell out a *per se* offense. See *United States* v. *Morgan, et al.*, 118 F. Supp. 621, 688-91 (S.D. N.Y. 1953); *cf. United States* v. *Colgate & Co.*, 250 U.S. 300 (1919). Territorial restrictions may not involve illegal division of markets. *United States* v. *National Football League*, 116 F. Supp. 319 (E.D. Pa. 1953). And an apparent combination sale practice may lack the essential elements of an illegal tying arrangement. See *Times-*
819 *Picayune* v. *United States*, 345 U.S. 594 (1953); *United States* v. *Kohler*, 1952-1953 Trade Cases, par. 67,453, 67,553 (E.D. Pa. 1953). By the same token, the mere application of the term "boycott" to a refusal to deal will not necessarily spell out the illegal group boycott condemned as *per se* illegal by the Supreme Court. See *Encore Stores,*

Inc. v. *May Department Stores Co.*, 164 F. Supp. 82, 85 (S.D. Cal. 1958). In consequence, the courts must be alert not only to protect the public from the economic harm of antitrust violation, but also to preserve the equally important freedom of individuals to exercise the individual initiative upon which our economy is based.

The standard for determining what combinations (and their activities) involve the prohibited degree of public harm is nowhere spelled out in specific terms. It is set forth in general terms in *Chicago Board of Trade* v. *United States*, 246 U.S. 231 (1918) at page 238:

> "Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint
> 820 and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences."

Under this "rule of reason," it is held, the Sherman Act does not prevent group "adoption of reasonable means to protect interstate commerce from destructive or injurious practices," *Sugar Institute* v. *United States*, 297 U.S. 553, 597-98 (1936), nor prohibit "normal and usual contracts incident to lawful purposes and intended to further legitimate trade." (*Eastern States Lumber Dealers' Ass'n.* v. *United States*, 234 U.S. 600, 609-10 (1914); cf. *Maple*

Flooring Ass'n. v. *United States*, 268 U.S. 563, 582-83 (1925)). Thus, trade associations may be established, and assuming that membership is reasonably open to all in the industry, they may limit their services to members. *Moore* v. *New York Cotton Exchange*, 270 U.S. 593 (1926); cf. *Associated Press* v. *United States*, 326 U.S. 1, 4-5, 24-25 (1945). Groups may also establish rules for trading which are binding upon the members, where these do not operate to prejudice the public interest. *Chicago Board of Trade* v. *United States, supra; Rogers* v. *Douglas Tobacco Board of Trade*, 244 F. 2d 471, 482-83 (5th Cir. 1957), 266
821 F. 2d 636 (5th Cir. 1959), cert. denied 361 U.S. 833, 80 S.Ct. 85 (1959).

Similarly, terminal facilities may be established cooperatively under reasonable regulations and provided that they are made available on a non-discriminatory basis (*United States* v. *Terminal Rr. Ass'n.*, 224 U.S. 383 (1912)); cf. *Associated Press* v. *United States*, 326 U.S. 1, 25 (1945); and groups may take joint action within reasonable limitations in connection with such miscellaneous matters as insurance (*Ruddy Brook Clothes, Inc.* v. *British & Foreign Marine Ins. Co.*, 195 F. 2d 86 (7th Cir. 1952), cert. denied, 344 U.S. 816 (1952)); credit terms (*United States* v. *Cincinnati Fruit & Produce Credit Ass'n.*, 1956 Trade Cases, par. 68,248 (S.D. Ohio); cf. *United States* v. *First National Pictures, Inc.*, 282 U.S. 44 (1930)); public safety (*Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co., et al.*, 273 F. 2d 196 (7th Cir. 1959), cert. granted, June 6, 1960); and selection of advertising media (*Dist. of Col. Citizen Publ. Co.* v. *Merchants & Mfrs. Ass'n., Inc.*, 83 F. Supp. 994 (D. Col. 1949).

Justice Frankfurter pointed out in his concurring opinion in *Associated Press* v. *United States*, 326 U.S. 1, 27 (1945):

822 " . . . ever since the Sherman Law was saved from stifling literalness by 'the rule of reason' . . . it is not

sufficient to find a restraint. The decisive question is whether it is an unreasonable restraint. This depends, in essence on the significance of the restraint in relation to a particular industry. Compare *Chicago Board of Trade* v. *United States*, 246 U.S. 231, 238."

Plaintiff has recognized its obligation to plead and prove public injury by alleging it in its complaint. Plaintiff alleged in substance that the service provided by Railroad Transfer was less extensive than, inferior to and more costly than the service which Parmelee had rendered and the service which Parmelee proposed to render. (Complaint, pars. 33(f) and (i), 34(d); and see par. 19.) These allegations were denied in defendants' answers.

The allegations that Cross was disabled as a result of his conduct from performing his duties as a Commissioner, is not an allegation of the kind of public injury the antitrust laws are designed to prevent. *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 493 (1940); *Kinnear-Weed Corp.* v. *Humble Oil & Refining Co.*, 214 F. 2d 891, 894 (5 Cir. 1954), cert. denied, 348 U.S. 912 (1954).

It is unnecessary to discuss in detail in this opinion the evidence bearing upon the cost of the service, who bears that cost, the extent of the service and the quality of the service. These issues were determined by the 823 jury adversely to plaintiff. Therefore, plaintiff has failed to meet its burden of proving public injury, an essential element of its cause of action in this private treble damage suit. Judgment should therefore be entered for the defendants on this ground.

This Is Not An Antitrust Case

Other grounds exist which require the Court to enter judgment for the defendants. It appears as a matter of law from the facts alleged in the complaint, taken together with the proof introduced or offered at the trial, that no

violation of the antitrust laws has occurred, even assuming that plaintiff's version of the facts is true. Plaintiff's claim does not fall within the family of antitrust violations. The facts charged, if proven, may amount to a violation of some other law or moral or ethical code, but they do not amount to a violation of the antitrust laws. This is so notwithstanding the conclusory allegations of the complaint as to conspiracy, elimination and foreclosing of competition, and restraining and monopolizing. It is the duty of the Court to consider the facts alleged, rather than "incendiary, yet vague, charges" characterizing those facts. Cf. *Automatic Radio Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, 834 (1950).

The first question is whether the joint exclusive transfer contract was lawful, apart from the manner in which the selection of the transfer agent was made.

824 *The Legality Of The Exclusive Five-Year Contract Entered Into By The Railroads Jointly*

It must be recognized that in the passage of the years since the adoption of the Sherman Act, Congress has superimposed upon the general policy of competition there expressed additional policies with respect to what may be regarded as regulated industries. Thus, the Supreme Court pointed out in *Federal Communications Comm.* v. *RCA Communications, Inc.*, 346 U.S. 86, 91-92 (1953):

> "That there is a national policy favoring competition cannot be maintained today without careful qualification. It is only in a blunt, undiscriminating sense that we speak of competition as an ultimate good. Certainly, even in those areas of economic activity where the play of private forces has been subjected only to the negative prohibitions of the Sherman Law, this Court has not held that competition is an abso-

lute. See *Chicago Board of Trade* v. *United States*, 246 U.S. 231; cf. Mason, Monopoly in Law and Economics, 47 Yale L. J. 34.

It was not unlawful for the railroads to enter into an exclusive transfer contract with Railroad Transfer Service, Inc. In the first place, the contract entered into with that company was substantially the same as the contractual arrangements which had existed between the railroads and Parmelee for many years. I find that there is no genuine issue as to this. Parmelee dealt with the railroads as a group, the railroads made their contractual arrange-
825 ments acting jointly (with the exception of one or two smaller railroads), and Parmelee's arrangements were exclusive (except for the transfer of certain special groups, such as baseball teams, as to which there is a dispute in an action pending in the Superior Court of Cook County, Illinois). The only difference between the two arrangements is that one was in writing and the other was oral.

The fact that the contract with Railroad Transfer Service, Inc. was for a term of five years does not render it illegal. Parmelee, who had had the exclusive contract for many years, sought a six and one-half year contract on the stated ground that such tenure was necessary to permit amortization of its contemplated investment in new equipment. The request of Keeshin, who as a newcomer had to purchase all the equipment necessary to carry on the business, for a five-year contract for the same stated ground was not unreasonable. If it were, no newcomer could ever have challenged Parmelee's monopoly.

The Supreme Court has held that the exclusive contract between Parmelee and the railroads was not unlawful. In *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 228-229 (1947), the court said:

"Parmelee's contracts are exclusive in nature, . . . It is true, of course, that exclusive contracts for the

transportation service in question are not illegal."
826 See also the opinion of Judge LaBuy upon remand, *U. S.* v. *Yellow Cab Co.*, 80 F. Supp. 936, 944 (N.D. Ill. 1948), and see also *Donovan* v. *Pennsylvania Co.*, 199 U.S. 279, 295-97 (1905) (cited by the Supreme Court in the *Yellow Cab* case); *Delaware L. & W. R. Co.* v. *Morristown*, 276 U.S. 182, 189 (1928); *Black & White Taxi Co.* v. *Brown & Yellow Taxi Co.*, 276 U.S. 518, 528-529 (1928); *Depot C. & B. Co.* v. *Kansas City Terminal Railroad Co.*, 196 Fed. 212, 214 (W.D. Mo. 1911).

In *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77 (1958), in which the Court held invalid an ordinance of the City of Chicago which would have restricted the right of Railroad Transfer Service to operate on the city streets in performing the transfer service for the railroads, the Court again expressly recognized the propriety of the railroads acting as a group to select an exclusive transfer agent. In that opinion, the Court, speaking of the Chicago transfer problem, said (p. 79):

> "Because of the serious problems of scheduling and passenger convenience involved in this interchange, the railroads, as a group, have long provided for the transfer of through passengers from one station to another by a systematic and highly organized motor carrier operation."

The Court in that case reviewed the applicable sections of the Interstate Commerce Act and held that the transfer service "is at least authorized, if not actually re-
827 quired," by the Act as a reasonable and proper interchange facility (357 U.S. at 85-86). The Court said further (p. 88):

> "Because of close time schedules, the great volume of traffic and its irregular ebb and flow, the railroads obviously need a cooperative and dependable transfer operator with suitable equipment who is willing to work in close harmony with them. The railroads have

> rejected as unsuitable the only transfer service now licensed to operate by the City. If local officials can prevent them from providing this service by some other means, a breakdown in the organized transfer of passengers could result. At a minimum, they would be forced to deal once again with the rejected operator.

It is to be noted that Parmelee intervened in that case and that the six railroad defendants were parties plaintiff.

Even if it had not been decided by the express holdings of the cases first cited above that the railroads could properly enter into an exclusive transfer contract with a single transfer agent, this conclusion would follow from the Supreme Court's holding in the *City of Chicago* case that the service is authorized as a reasonable and proper interchange facility, which is in accordance with the holdings in *Cederblade* v. *Parmelee*, 166 F. 2d 554 (7th Cir. 1948) and *Commercial Zones & Terminal Areas*, 48 Motor Carrier Cases 418 (1948). It is well settled that railroads have the right to combine their terminal facilities and to select a joint agent to operate such facilities. *United States* v. *St. Louis Terminal*, 224 U.S. 383, 402, 410 (1912); *Central Transfer Co.* v. *Terminal Railroad Association of St. Louis*, 61 F. 2d 546, 550 (8th Cir. 1932), affirmed 288 U.S. 469 (1933); *Transfer in St. Louis and East St. Louis by Dray & Truck*, 155 I.C.C. 129, 140, 143-144 (1929).

It follows that the railroads had the right to join together in selecting a transfer agent and in entering into an exclusive contract with that agent. The only question remaining is whether the railroads violated the antitrust laws by the manner in which they selected one of the two competitors for the contract.

The Selection of the Transfer Agent

The facts which plaintiff alleges and which it either proved or formally offered to prove are as follows: Some

time prior to March 15, 1955, Keeshin, for the purpose of having the contract awarded to him, induced Cross to persuade the defendant railroads, by promising favors to the railroads, to vote in favor of recommending that Keeshin's proposal for a five-year exclusive contract be accepted by the railroads instead of Parmelee's proposal for a six and one-half year exclusive contract. This is the substance of the charge which plaintiff offered to prove.

The Sherman Act did not require the railroads to award the contract to the lower bidder or to deal with Par-
829 melee if they preferred to deal with Keeshin. Cf. *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77, 88 (1958). Their selection of one competitor rather than another deprives the other of the opportunity to perform the service, *i.e.*, to engage in the transfer business, and to that extent restrains interstate commerce, but such a restraint is not within the Act.

In *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469 (1940), it was contended that a conspiracy of the defendant to stop the operation of the plaintiff's factory by means of a sit-down strike in order to enforce their demands against the plaintiff violated the Sherman Act. The Court rejected this contention, holding that a sit-down strike, though it restrained the movement of goods in interstate commerce, was not the kind of restraint of commerce which the Sherman Act is designed to prohibit. The Court said (pp. 512-513):

> " . . . The Sherman Act was not enacted to police interstate transportation, or to afford a remedy for wrongs, which are actionable under state law, and results from combination and conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity, such as to 'monopolize the supply, control its prices or discriminate between its would-be purchasers.' . . .

"If, without such effects on the market, we were to hold that the local factory strike, stopping production and shipment of its products interstate, violates the Sherman law, practically every strike in modern in-
830 dustry would be brought within the jurisdiction of the federal courts, under the Sherman Act, to remedy local law violations."

The authority of the *Apex* case on the point involved here is not impaired by the footnote comment on the case in *Klor's* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213, n. 7 (1958). There the Court was addressing itself to language in the opinion tending to support the proposition that effect on prices is essential to a Sherman Act violation. The Court did not question the fundamental holding of the case that conduct of the kind there involved was not within the scope of the Sherman Act, and that such conduct is not made into an antitrust violation by accompanying conduct which is illegal under some other law.

The awarding of a contract, which the awarding parties have a right to award on any basis they choose to one rather than to another competitor for the contract, is no more within the scope of the Sherman Act than is the sit-down strike of the *Apex* case. Each of these courses of conduct restrains trade in a sense. Neither constitutes a restraint of trade within the meaning of the Sherman Act, however. To hold otherwise would render the Sherman Act a lowest responsible bidder statute, which was plainly not the intent of Congress.

The automobile dealership cases are also pertinent. In *Schwing Motor Co.* v. *Hudson Sales Co.*, 138 F. 2d
831 899 (D.C. Md. 1956), the plaintiffs were former Hudson dealers whose dealership contracts Hudson had refused to renew. Plaintiffs alleged that Hudson and the sole remaining Hudson dealer in Baltimore had conspired to eliminate the plaintiffs from competition with the remaining dealer in the sale of automobiles and parts. As

the court stated it, the issue was "whether an agreement between an automobile manufacturer and a retail dealer, pursuant to which the manufacturer refuses to renew its expiring agreements with two other dealers, and gives the dealer a 'virtual monopoly' of the sale of one make of automobile in one city, is a combination or conspiracy to monopolize trade or commerce, or in restraint of trade or commerce, in violation of the Sherman Act and of the Clayton Act."

The issue in the *Schwing* case is very similar to that in the case at bar. It was there alleged that the successful dealer had induced Hudson to refuse to renew the plaintiff's dealerships, just as in the case at bar it is alleged that Keeshin with Cross' help induced the defendant railroads to award the contract to Keeshin's company rather than Parmelee, which meant that the railroads would "refuse to deal" with Parmelee. The substantial distinction between the two cases is that in the *Schwing* case the conduct of the defendants resulted 832 in the remaining dealers receiving all of a business which had previously been divided among several competitors; while in the case at bar the business had always been in the hands of one firm because it was necessary for the railroads to employ a single agent to perform the transfer service. Consequently, in the case at bar there was no change in the economic situation as a result of the conduct complained of.

The court in the *Schwing* case held that the plaintiff failed to allege a violation of the Sherman Act, saying (p. 902):

> "Every manufacturer has a natural and complete monopoly of his particular product, especially when sold under his own private brand or trade name. . . . A refusal to deal becomes illegal only when it produces an unreasonable restraint of trade or monopoly forbidden by the Antitrust laws."

The Court also pointed out (p. 903) that one has a right to deal with one person rather than another and may grant exclusive contracts which necessarily involve a limited monopoly in the area they cover, and that "such limited monopolies are not invalid . . . unless they are used to violate the antitrust laws." Finally, the court said (p. 905):

> "No horizontal conspiracy between competitors, no effort to extend the manufacturers' natural monopoly of its own product, no effort to establish market dominance and drive out the products of competitors is alleged."

833 These same principles apply in the case at bar. It is well settled that the railroads had the right to employ an exclusive transfer agent to perform the transfer service, and that it is in the best interests of the public and the railroads to do so. The natural result of the exercise of this right is a limited monopoly in the hands of the agent selected to render the service. This limited monopoly or the alleged agreement between the successful bidder and the railroads with respect to it does not violate the antitrust laws in any way. There is no effort to extend the natural monopoly, no horizontal conspiracy between competitors, and no effort to establish market dominance.

The decision in the *Schwing* case was affirmed *per curiam* by the Court of Appeals for the Fourth Circuit, which adopted the opinion of the district court, 239 F.2d 176, cert. den. 355 U.S. 823.

The same reasoning was followed in the very similar case of *Webster Motor Car Co.* v. *Packard Motor Car Co.*, 243 F.2d 418, cert. den. 355 U.S. 822, in which the Court of Appeals for the District of Columbia reversed a decision of the District Court (135 F.Supp. 4) which was in conflict with the *Schwing* case. The court held that there was no attempt to create a monopoly, since there was no

evidence of any attempt to get control of the relevant
834 market, and that there was no contract or conspiracy in restraint of trade within the meaning of the Sherman Act. (243 F.2d 420) The court also held that neither the fact that an exclusive arrangement of this kind eliminates other dealers in the same product of the same manufacturer nor the fact that the remaining dealer induced the manufacturer's decision to grant the exclusive dealership rendered the conduct complained of a violation of the Sherman Act. (243 F.2d 421) See also *Riedley* v. *Hudson Motor Car Co.*, 82 F.Supp. 8 (W.D. Ky. 1949); *Fedderson Motors, Inc.* v. *Ward*, 180 F.2d 519 (10th Cir. 1950); *Neumann* v. *Bastian-Blessing Co.*, 70 F. Supp. 447 (N.D. Ill. 1947); *Hudson Sales Corp.* v. *Waldrip*, 211 F.2d 268 (5th Cir. 1954), cert. den. 348 U.S. 821.

The complaint also alleges that in order to induce the railroads to vote in favor of Keeshin's proposal, Cross promised to give them favorable consideration in matters pending before the Interstate Commerce Commission, and that he did give them favorable consideration. It is to be observed that these allegations found no support in plaintiff's elaborate offers of proof, which are assumed for present purposes to have been made in good faith and to state facts which plaintiff could prove.

However, apart from whether these allegations were or could be proved, they would seem to add nothing to the
835 basic charge of plaintiff, which is that Keeshin induced Cross to persuade the railroads to award the contract to Keeshin rather than Parmelee. The fact that in so acting Cross or Keeshin or the railroads were violating some other statute, law, or ethical or moral code does not render their conduct violative of the antitrust laws if it is not otherwise so. Thus in *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, (1940), the Court held that restraints which were not within the Sherman Act when achieved by peaceful

means were not brought within the scope of the act because they were attended by unlawful violence. The Court said (p. 513):

> "The Sherman Act is concerned with the character of the prohibited restraints and with their effort on interstate commerce. It draws no distinction between the restraints effected by violence and those achieved by peaceful but often times quite as effective means. Restraints not within the act, when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence."

The same principle was applied in *Kinnear-Weed Corp.* v. *Humble Oil & Refining Co.*, 214 F.2d 891, 894 (5th Cir. 1954), cert. den., 348 U.S. 912 (1954), in which the Court said:

> "It is true that the conduct charged to the defendant was in fact antagonistic to the purpose of the patent laws and that that purpose is a public purpose . . . That, however, is not the kind of public purpose protected by the antitrust laws, which are designed instead to protect the free flow of interstate commerce."

836 In *Arthur* v. *Kraft-Phenix Cheese Corp.*, 26 F.Supp. 824 (D. Md. 1937), it was contended that an otherwise lawful refusal to sell at a dealer's discount was converted into a Sherman Act violation because it was designed to force the plaintiff to buy out a competitor who was indebted to the defendant, *i.e.*, the conduct was for an improper motive. The court said (p. 828):

> "Essentially what is complained of is a private wrong or common law tort in which the public interest is not involved. It is legally quite impossible to understand how the public interest could be concerned in this individual private controversy. There is nothing in the alleged facts to show that the motive of the defendant was to restrain trade or to lessen competition and certainly nothing to show that the alleged

> unreasonable demand on the plaintiff could possibly have the effect of lessening the competition, or of raising prices or even maintaining prices. Nor is it alleged in even the most general terms that the transaction had any effect whatever on the volume of the defendant's business or the prices at which its products were sold. It is quite impossible to understand how the alleged act complained of would tend to promote or increase the defendant's monopoly of its own product. Every manufacturer has naturally a complete monopoly of his particular product especially when sold under his own private brands, and no private controversy with the distributor could legally tend to increase that type of a natural monopoly. The Sherman Act is, therefore, clearly not really involved."

Whether Keeshin or Parmelee was chosen to perform the transfer service, the transfer agent would have a monopoly in one sense. However, this is a lawful
837 monopoly, as the Supreme Court has held. Its nature was not affected by the alleged improper inducement affecting the award of the contract.

A claim comparable with that of Parmelee was made in *Hohensee* v. *Akron Beacon Journal Publishing Co.*, 141 F.Supp. 90, 174 F.Supp. 450 (N.D. Ohio, 1959), affirmed, C.C.H. Trade Reg. Rep., par. 69,721 (6th Cir., May 13, 1960), in which it was alleged that the defendants had conspired to restrain the trade of plaintiff by slander, libel and other tortious acts. In holding that the complaint failed to state a claim upon which relief could be granted, the court said (171 F.Supp. at 92):

> "The Antitrust laws do not purport to afford remedies for all torts committed by or against persons engaged in interstate commerce. Whether plaintiff has a cause of action for slander or libel is not a matter for determination in this action."

The Court cited *Hunt* v. *Crumboch*, 325 U.S. 821 (1945), in which the Supreme Court held that a labor union's re-

fusal, motivated by a desire to punish plaintiff, to admit plaintiff's employees to membership in the union, thereby rendering it impossible for plaintiff to continue in business, was not a violation of the Sherman Act. Speaking for the Court, Mr. Justice Black said (p. 826):

> "That Act does not purport to afford remedies for all torts committed by or against persons engaged in interstate commerce."

838 See also *Rossi* v. *McCloskey & Co.*, 149 F. Supp. 638 (E.D. Pa. 1957).

Accordingly, it would add no more to the conduct of Keeshin and Cross as violations of the antitrust laws if Cross promised the railroads favorable consideration in matters pending before the Interstate Commerce Commission, than if he had induced the railroads' action by threats of violence, blackmail or other means unlawful under some law other than the antitrust laws. It would add no more to the railroads' conduct, so far as the antitrust laws are concerned, that they were persuaded by promises of favors than if they acted through any other improper motive unrelated to those laws.

It would be no service to the Sherman Act, which plays such a vital role in preserving our free economy, to attempt to drag within its scope every kind of misconduct which seems to fit nowhere else. The purposes of that Act are best served by vigorous enforcement of it in the cases in which it was intended to apply, *i.e.*, cases in which restriction or monopolization of trade or commerce are the object or the result of defendant's conduct.

It therefore appears from the facts alleged in the complaint and proved and offered to be proved at the trial that no violation of the antitrust laws has occurred. Judgment should be entered for defendants on this additional ground.

/s/ J. H. Miner

Judge

June 30, 1960.

840

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

FINAL JUDGMENT

This Cause Coming On To Be Heard This 30th day of June, 1960 pursuant to the order setting the case for entry of judgment on this date; and

The Court having held that the railroads terminating in Chicago had the right to act jointly in negotiating and executing an exclusive contract with Railroad Transfer Service, Inc. for the performance by the latter of the interstation transfer service in Chicago, for a period of five years commencing October 1, 1955, and that their entering into such a contract did not constitute a violation of Section 1 or Section 2 of the Sherman Act (15 U.S.C. §§ 1, 2) or any other provision of the antitrust laws; and

The Court having held further that plaintiff cannot maintain its private antitrust action unless it can es-
841 tablish public injury,—*i.e.*, that the conduct complained of is reasonably calculated to prejudice the public interest and has resulted in an appreciable lessening of service to the public or has deprived the public of a service of over-all superiority, and having ordered a separate trial of said issue of public injury before trial of any other issue, and said separate trial having been held before a jury impanelled to try said issue, and the jury having by its verdict found in favor of defendants on said issue of public injury; and

The Court also having considered all the evidence offered by plaintiff and received upon the trial, and having permitted plaintiff on the trial to make complete and detailed offers of proof as to all issues in the case, over defendants' objections, and having considered said offers of proof made by plaintiff which the Court refused, including those which the Court ordered stricken, and having

determined that, viewing said evidence and offers of proof in the light most favorable to plaintiff, and making all reasonable inferences therefrom in favor of plaintiff, said evidence, that received on the trial and that offered by plaintiff and rejected by the Court, fails to establish a violation of Section 1 or Section 2 of the Sherman
842 Act or any other provision of the antitrust laws; and

The Court also having determined that the allegations of plaintiff's complaint, as amended, relating to issues other than that determined by the verdict of the jury, do not state a claim upon which relief can be granted under Section 1 or Section 2 of the Sherman Act, or any other provision of the antitrust laws; and

The Court having determined that there is no just reason for delay in the entry of final judgment upon the claims asserted in plaintiff's complaint, as amended;

It Is Therefore Ordered And Adjudged that final judgment for defendants on the claims asserted in plaintiff's complaint, as amended, be and hereby is entered on said verdict and on the aforesaid conclusions of the Court, and that plaintiff shall take nothing by its action; and

It Is Further Ordered And Decreed that the remainder of the complaint, as amended, in so far as it sounds in equity, is dismissed for want of equity and final judgment is entered for defendants and against plaintiff on
843 the equitable issues; and

It is Further Ordered And Adjudged that defendants shall recover their costs against said plaintiff and that execution shall issue therefor; and

It Is Further Ordered that the counterclaims of defendants are continued for trial and disposition until further order of the Court.

Enter:

/s/ J. H. Miner

Judge

June 30, 1960

844

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

NOTICE OF APPEAL

(Filed July 20, 1960)

Notice Is Hereby Given that Parmelee Transportation Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in this action on June 30, 1960.

Dated: July 20, 1960.

Parmelee Transportation Company,
Plaintiff-Appellant

By *Thomas C. McConnell*
By Thomas C. McConnell

Lee A. Freeman
Lee A. Freeman

Herbert B. Lazarus
Herbert B. Lazarus

Its Attorneys

Thomas C. McConnell,
McConnell, Paschen & Curtis
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105 South LaSalle Street,
Chicago 3, Illinois

Herbert B. Lazarus,
1790 Broadway,
New York, New York

845

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on July 20, 1960, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Albert J. Meserow,
231 S. LaSalle Street,
Rm. 1353,
Chicago 4, Illinois
and
Jerome F. Dixon,
111 W. Washington Street,
Rm. 1946,
Chicago 2, Illinois
Attorneys for John L. Keeshin and Railroad Transfer Service, Inc.

Joseph C. Owens,
100 N. LaSalle Street,
Rm. 1111,
Chicago 2, Illinois
Attorney for Hugh W. Cross

Marvin A. Jersild and
Martin J. Keating,
Suite 1236 LaSalle Station,
Chicago 5, Illinois
Attorneys for The New York Central Railroad Company

Floyd E. Thompson and Philip W. Tone,
135 S. LaSalle Street,
Chicago 3, Illinois
Attorneys for Howard E. Simpson, Paul E. Feucht, Wayne A. Johnston, Fred G. Gurley, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Chicago and North Western Railway Company, Illinois Central Railroad and The Pennsylvania Railroad Company.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 20th day of July, 1960.

Roy H. Johnson,
Roy H. Johnson, Clerk
By *Gizella Butcher*
Deputy Clerk

(SEAL)

847 July 22, 1960: Filed Notice of Appearance of Appellee The New York Central Railroad Company and its attorneys.

849 July 26, 1960: Filed Notice of Appearance of Appellees, Howard E. Simpson, et al., and their attorneys.

851 Filed Notice of Appearance of Appellee Hugh W. Cross and his attorney.

852 August 4, 1960: Filed Notice of Appearance of Appellees, John L. Keeshin, et al., and their attorneys.

853 August 15, 1960: Filed Stipulation as to record on appeal.

859 August 26, 1960: Filed Motion of plaintiff.

862 Order entered extending the time in which to file record on appeal to and including October 18, 1960.

863 October 4, 1960: Filed Stipulation.

864 Order entered directing copies of depositions of John L. Keeshin, filed July 17, 1959, be certified in lieu of originals not available in Clerk's office at this time.

865

Northern District of Illinois }
United States of America } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the above and foregoing are the original papers constituting the record on appeal in the cause entitled: Parmelee Transportation Company, Plaintiff vs. John L. Keeshin, et al., Defendants, No. 56 C 323, as follows:

Complaint filed February 16, 1956

Motion of Defendants Railroad Transfer Service, Inc. and John L. Keeshin, to dismiss the complaint and to strike certain parts of complaint, filed April 23, 1956

Answer of Defendant Hugh W. Cross, filed April 25, 1956

Motion to dismiss of New York Central R.R. Company, filed April 25, 1956

Stipulation filed September 2, 1960, with copy of Motion to dismiss etc., of certain defendants attached thereto

Memorandum of the Court filed September 19, 1956

Order entered September 19, 1956, denying motion of each defendant to dismiss and each defendant granted 30 days from date to answer complaint

Answer of John L. Keeshin, and Railroad Transfer Service, Inc., filed October 19, 1956

Answer of Defendant Railroad Presidents and certain of defendant Railroads filed October 19, 1956

Answer of Defendant The New York Central Railroad Company filed October 19, 1956

Interrogatories propounded to plaintiff by certain defendants, filed May 31, 1957

866 Interrogatories propounded to Defendant The Baltimore and Ohio Railroad Company by Plaintiff, filed July 1, 1957

Interrogatories propounded to Defendant The Atchison, Topeka and Santa Fe Rwy. Co. by Plaintiff filed July 1, 1957

Interrogatories propounded to Defendant Illinois Central Railroad Company by plaintiff filed July 1, 1957

Interrogatories propounded to Defendant New York Central Railroad Company by Plaintiff filed July 1, 1957

Interrogatories propounded to defendant Chicago and North Western Railway Co. by Plaintiff filed July 1, 1957

Interrogatories propounded to Defendant The Pennsylvania Railroad Company by Plaintiff filed July 1, 1957

Objections of Plaintiff to Interrogatories propounded by certain defendants on May 31, 1957, filed July 1, 1957

Memorandum in support of plaintiff's objections to interrogatories propounded by certain defendants on May 31, 1957, filed July 1, 1957

Memorandum in opposition to plaintiff's objections to interrogatories filed July 9, 1957

Plaintiff's reply memorandum in support of objections to interrogatories propounded by certain defendants, filed July 16, 1957

Objections of Defendant, Illinois Central Railroad to interrogatories propounded by plaintiff, filed August 7, 1957

Objections of Defendant, The Pennsylvania Railroad Company to interrogatories propounded by Plaintiff, filed August 7, 1957

Objections of Defendant The Baltimore and Ohio Railroad Company to interrogatories propounded by plaintiff filed August 7, 1957

Objections of Defendant Atchison, Topeka and Santa Fe Railway Company to interrogatories propounded by Plaintiff filed August 7, 1957

Objections of Defendant New York Central Railroad Company to Interrogatories propounded by plaintiff filed August 7, 1957

Objections of Defendant Chicago and North Western Railway Company to interrogatories propounded by plaintiff on July 1, 1957, filed August 7, 1957

867 Brief in support of Railroad Defendants' objections to plaintiff's interrogatories, filed August 7, 1957

Answer to interrogatories propounded to plaintiff on May 31, 1957 by certain defendants, filed August 26, 1957

Motion of Defendant Railroads and Railroad Presidents to compel answer to certain interrogatories, filed September 6, 1957

Brief in support of motion of defendant Railroads and Railroad Presidents to compel answer to certain interrogatories, filed September 6, 1957

Plaintiff's Brief in opposition to the railroad Defendants' objections to plaintiff's interrogatories, filed September 6, 1957

Answer of Parmelee Transportation Company to motion of certain defendants to compel answers to interrogatories filed September 24, 1957

Supplemental answer to interrogatory 7 (B) propounded to Plaintiff on May 31, 1957 by certain defendants, filed September 24, 1957

Reply of Railroad Defendants to plaintiff's Brief in opposition to objections to interrogatories filed October 4, 1957

Reply Brief in support of motion of defendant Railroads and Railroad Presidents to Compel answer to certain interrogatories filed October 10, 1957

Order entered October 14, 1957 denying motion of defendant railroads to set down for hearing their objections to interrogatories

Memorandum of the Court filed November 13, 1957

Memorandum in support of motion of defendant Railroads and Railroad Presidents to reconsider ruling sustaining plaintiff's objections to interrogatories propounded by certain defendants on May 31, 1957, filed November 15, 1957

Notice and Second set of interrogatories propounded to Plaintiff by Defendant Railroads and Railroad Presidents, filed January 6, 1958

Objections of Plaintiff, to interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958, filed January 16, 1958

Motion of Plaintiff to extend time to answer interrogatories, filed January 20, 1958

868 Plaintiff's brief in support of objections to interrogatories propounded by Defendant Railroads and Railroad Presidents on January 7, 1958, filed January 22, 1958

Answer to second set of interrogatories propounded to Plaintiff on January 7, 1958, by certain defendants, filed February 6, 1958

Second supplemental answer to interrogatories propounded to plaintiff on May 31, 1957 by certain defendants, filed February 6, 1958

Brief in opposition to Plaintiff's objections to second set of interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958, filed February 7, 1958

Plaintiff's reply brief in support of objections to interrogatories propounded by defendant Railroads on January 7, 1958, filed February 18, 1958

Defendants' supplementary brief on objections to second set of interrogatories, filed March 4, 1958

Order entered June 10, 1958

Plaintiff's answer to second set of interrogatories propounded by defendant Railroads and Railroad Presidents on January 7, 1958, filed June 30, 1958

Notice and Motion filed July 31, 1958

Order entered August 1, 1958

Plaintiff's list of documents filed September 25, 1958

List of documents of Hugh W. Cross, defendant, filed October 10, 1958

List of documents of defendant Railroads and Railroad Presidents, filed October 20, 1958

Notice and list of documents of the New York Central Railroad Company filed October 22, 1958

List of documents of John L. Keeshin, and Railroad Transfer Service, Inc., Defendants, filed November 3, 1958

Objections of Defendant, Hugh W. Cross, to plaintiff's list of documents, filed November 3, 1958

Objections of Plaintiff to the admission in evidence of documents appearing on the list submitted by the defendant Railroads, and Railroad Presidents, filed November 3, 1958

Objections of Defendant Railroads and Railroad Presidents to documents included in plaintiff's list filed November 4, 1958

869 Objections of Defendants, John L. Keeshin and Railroad Transfer Service, Inc., to plaintiff's list of documents, filed November 5, 1958

Motion of Defendant Railroads and Railroad Presidents to strike plaintiff's list of documents and in the alternative for pre-trial rulings, filed January 30, 1959

Adoption and Joinder by John L. Keeshin, and Railroad Transfer Service, Inc., Defendants, in motion of Defendants R.R. and Railroad Presidents to strike plaintiff's list of documents and in the alternative for pre-trial rulings, filed February 11, 1959

Adoption and Joinder of Hugh W. Cross, defendant in motion and brief on behalf of Defendants Railroads and Railroad Presidents to strike plaintiff's list of documents and in the Alternative for pre-trial rulings, filed March 4, 1959

Motion for leave to file amendments to complaint, filed May 14, 1959, amendments to complaint attached

Order entered May 14, 1959, granting leave to plaintiff to file its amendments to complaint

Answer of defendant Railroad Presidents and certain of defendant Railroads to complaint as amended filed May 14, 1959

Answer of Defendants John L. Keeshin and Railroad Transfer Service, Inc. to the Amendments to the complaint herein, filed May 25, 1959

Answer of defendant, The New York Central Railroad Company, to certain amendments to the complaint filed June 3, 1959

Order entered June 10, 1959, granting leave to plaintiff to file motion for partial summary judgment instanter, etc.

Plaintiff's motion for partial summary judgment filed June 10, 1959

Exhibit A filed June 10, 1959

Opposition to plaintiff's motions of June 10, 1959, filed June 10, 1959

Affidavit of E. B. Padrick filed by defendant Railroads and Railroad Presidents in opposition to plaintiff's motion for summary judgment filed June 30, 1959

Brief of Defendants John L. Keeshin, et al., filed August 12, 1959, attached thereto Affidavits of Edward Bayr, et al.

870 Order entered November 12, 1959, directing filing of transcript in pre-trial conference on May 11, 1959

Order entered November 30, 1959, denying plaintiff's motion for summary judgment etc.

Memorandum of the Court dated December 4, 1959, and filed March 10, 1960

Memorandum of the Court and order dated March 10, 1960

Order entered May 3, 1960, overruling defendants' motion that court direct jury to return finding for defendants etc.

Given and refused instructions filed May 10, 1960

Verdict filed May 10, 1960

Order entered May 10, 1960, judgment on the verdict and order entered holding Thomas C. McConnell and Lee A. Freeman in direct contempt of court

Order entered May 12, 1960, amending orders entered on May 10, 1960

Memorandum opinion and final judgment entered June 30, 1960

Notice of Appeal of Plaintiff filed July 20, 1960 Clerk's certificate of mailing attached thereto

Notice of Appearance of Appellees The New York Central Railroad Company, and its attorneys filed July 22, 1960

Notice of Appearance of Appellees Howard E. Simpson, et al., and their attorneys, filed July 26, 1960

Notice of appearance of Appellee Hugh W. Cross, and his attorney filed July 26, 1960

Notice of Appearance of Appellees John L. Keeshin, et al., and their attorneys filed August 4, 1960

Motion of Plaintiff filed August 26, 1960

Order entered August 26, 1960, extending time in which to file record on appeal to October 18, 1960

Stipulation as to Record on Appeal filed August 15, 1960

871 Stipulation filed October ...., 1960

Order entered October ...., 1960, directing copies of Depositions of John L. Keeshin, filed July 17, 1959 be certified in lieu of originals not available in Clerk's office at this time

filed and entered among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 18th day of October, 1960.

Roy H. Johnson

Clerk

By Gizella Butcher

Deputy Clerk

(SEAL)

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VOLUME V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

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APPENDIX.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

STATEMENT REQUIRED BY RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

1. The style of the court and the title of this case are as shown in the above heading.
2. Time of commencement of suit: This action was commenced through entry of an order on May 10, 1960, (which was amended on May 12, 1960) whereby the court held appellant in direct contempt of court and continued imposition of sentence to June 30, 1960. On that date the court entered a further contempt order and certificate, adjudging appellant in direct contempt and sentencing him to confinement for a period of ten
2 days on each of three specifications described in said contempt order and certificate, said sentences to run concurrently.
3. The names of the parties hereto are as follows:
   (a) Appellant: Thomas C. McConnell
   (b) Appellee: United States of America.
4. The several dates when the respective pleadings were filed: No indictment was returned or information filed against appellant, nor did appellant receive notice of the facts constituting the alleged contempt as required by Rule 42(b) of the Federal Rules of Criminal Procedure. The court below further refused appellant an opportunity to answer or otherwise plead to the acts of contempt charged. On July 7, 1960, appellant filed a motion to arrest judgment and order of June 30, 1960, and to vacate the same and for trial before an impartial judge, which motion was denied by the court below on September 15, 1960.

5. Whether defendant was arrested, bail taken or property attached: On September 15, 1960, the court entered an order permitting appellant to remain at liberty upon furnishing personal bond without surety in the sum of $100 during the pendency of this appeal and until the mandate of this court is issued and filed on this appeal and an order entered thereon.
6. Time when trial was held: The court below refused to grant appellant either a trial or a hearing as required by Rule 42(b) of the Federal Rules of Criminal Procedure.
7. Name of the trial judge: Honorable Julius H. Miner.
8. No question was referred to a commissioner, master or referee.
9. The court below denied appellant trial by jury.
10. The contempt order and certificate was entered by the court below on June 30, 1960, but did not become final until appellant's motion to arrest judgment and vacate the same was denied on September 15, 1960.

3 11. Appellant's notice of appeal and bond were filed on September 21, 1960.

Thomas C. McConnell
Thomas C. McConnell, *pro se*
Francis J. McConnell,
Francis J. McConnell,
Attorney for
Thomas C. McConnell

McConnell, Paschen & Curtis
134 South LaSalle Street, #1110
Chicago 3, Illinois
RAndolph 6-9131

4

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

STATEMENT REQUIRED BY RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

1. The style of the court and the title of this case are as shown in the above heading.

2. Time of commencement of suit: This action was commenced through entry of an order on May 10, 1960, (which was amended on May 12, 1960) whereby the court held appellant in direct contempt of court and continued imposition of sentence to June 30, 1960. On that date the court entered a further contempt order and certificate, adjudging appellant in direct contempt and sentencing him to confinement for a period of ten days on each of four specifications described in said contempt order and certificate, said sentences to run concurrently.

5 3. The names of the parties hereto are as follows:
(a) Appellant: Lee A. Freeman
(b) Appellee: United States of America.

4. The several dates when the respective pleadings were filed: No indictment was returned or information filed against appellant, nor did appellant receive notice of the facts constituting the alleged contempt as required by Rule 42(b) of the Federal Rules of Criminal Procedure. The court below further refused appellant an opportunity to answer or otherwise plead to the acts of contempt charged. On July 7, 1960, appellant filed a motion to arrest judgment and order of June 30, 1960, and to vacate the same and for trial before an impartial judge, which motion was denied by the court below on September 15, 1960.

5. Whether defendant was arrested, bail taken or property attached: On September 15, 1960, the court entered an order permitting appellant to remain at liberty upon furnishing personal bond without surety in the sum of $100 during the pendency of this appeal and until the mandate of this court is issued and filed on this appeal and an order entered thereon.
6. Time when trial was held: The court below refused to grant appellant either a trial or a hearing as required by Rule 42(b) of the Federal Rules of Criminal Procedure.
7. Name of the trial judge: Honorable Julius H. Miner.
8. No question was referred to a commissioner, master or referee.
9. The court below denied appellant trial by jury.
10. The contempt order and certificate was entered by the court below on June 30, 1960, but did not become final until appellant's motion to arrest judgment and vacate the same was denied on September 15, 1960.
11. Appellant's notice of appeal and bond were filed on September 21, 1960.

Lee A. Freeman,
Lee A. Freeman, *pro se*
Brainerd Currie,
Brainerd Currie,
Attorney for
Lee A. Freeman

Lee A. Freeman
105 S. LaSalle Street
Chicago 3, Illinois
An. 3-6939

Brainerd Currie
University of Chicago
Law School
Chicago 37, Illinois
Mi. 3-0800

7 P L E A S had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of June, being the 6th day thereof, in the Year of Our Lord One Thousand Nine Hundred Sixty and of the Independence of the United States of America, the 184th Year.

Present:

Honorable William J. Campbell, Chief District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable Walter J. La Buy, District Judge
Honorable J. Sam Perry, District Judge
Honorable Julius J. Hoffman, District Judge
Honorable Julius H. Miner, District Judge
Honorable Julius H. Miner, District Judge
Honorable Edwin A. Robson, District Judge

Also Present:

Honorable Albert B. Maris, Senior United States Circuit Judge for the Third Circuit
Honorable Omer Poos, United States District Judge for the Southern District of Illinois
Honorable John J. Kilkenny, United States District Judge for the District of Oregon

Sitting pursuant to designation.

Roy H. Johnson, Clerk

William W. Kipp, Sr., Marshal

Thursday, June 30, 1960

Court Met Pursuant to adjournment

Present: Honorable Julius H. Miner, Trial Judge

8

IN THE UNITED STATES DISTRICT COURT

Thursday, June 30, 1960
Present: Honorable Julius H. Miner, District Judge

• • (Caption—No. 56 C 323) • •

It Is Ordered by the Court that five (5) days herefrom be and hereby are given to the plaintiff to file its objections herein.

9

IN THE UNITED STATES DISTRICT COURT

Thursday, June 30, 1960
Present: Honorable Julius H. Miner, District Judge

• • (Caption—No. 56 C 323) • •

The Court's own motion to suspend the contempt sentences imposed on this date on Lee A. Freeman and Thomas C. McConnell, if said Lee A. Freeman and Thomas C. McConnell will file a petition of retraction and apology, is entered and continued to September 15, 1960 at 10:00 A.M., and it is

Ordered that execution of said sentences be and hereby is stayed until September 15, 1960 at 10:00 A.M.

10

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

CONTEMPT ORDER AND CERTIFICATE

In conformity with Rule 42(a) of the Federal Rules of Criminal Procedure, I hereby certify that the criminal contempts set forth below were committed in the actual presence of the Court on the dates shown below and were

seen and heard by the Court at said times during the trial of the case in *Parmelee Transportation Company* v. *John L. Keeshin, et al.*, No. 56 C 323 in this Court, which commenced on April 21, 1960, and ended on May 10, 1960. It is obvious from the record and transcript in this cause, and more especially cited herein, that the defendants Lee A. Freeman and Thomas C. McConnell, both attorneys for the plaintiff herein, embarked upon a course of unprofessional, unethical, intimidating, insulting, defiant,
11 unfair and improper behavior, to foist their will upon the Court and jury and to dominate the course of procedure herein without regard to an honest and impartial administration of justice.

I find that the acts, statements, and conduct of each of the defendants hereinafter specified constituted contumacious conduct of so grave a character as to make imposition of fines insufficient punishment.

It Is Therefore Ordered And Adjudged that Lee A. Freeman is found guilty of direct contempt and that he be and is sentenced to confinement for a period of ten days on each of specifications numbered 1, 2, 3 and 4 below, such sentences to run concurrently, and he is hereby remanded to the custody of the Attorney General of the United States or his representative for the purpose of serving such sentence; and

It Is Ordered And Adjudged that Thomas C. McConnell is found guilty of direct contempt and that he be and is sentenced to confinement for a period of ten days for each of the acts specified in specifications 5, 6 and 7 numbered below, such sentences to run concurrently, and he is hereby remanded to the custody of the Attorney General of the United States or his representative for the purpose of
12 serving such sentence.

Specification Number 1

On April 28, 1960, in the presence and hearing of the jury, the following occurred:

"By Mr. Freeman:

"Q. Was the railroad service limited in substantial respects with respect to the railroad passengers that had available to them these transfer coupons?

"By Mr. Keating: Same objection, as a conclusion.

"By the Court: The same ruling.

"By Mr. Freeman: That is crazy." (Trans. 856-857)

Specification Number 2

On April 29, 1960, out of the presence and hearing of the jury but in open court, Mr. Freeman made the following statement to the Court:

"Your Honor, may I, with all deference, inquire whether or not this memorandum that was entered by you on December 6 has any significance or shall it be completely ignored?

"It seems to be, Your Honor, that you are willing to ignore those instances, and I will point out another one to Your Honor where you have ruled that documents are admissible, but at any time I seek to present a document that you have ruled admissible, there is a waving of arms on my learned counsels' side, and an immediate denial.

13 "I think, Your Honor, that if there is to be a reconsideration of this memorandum, it should be reconsidered for both sides and not for one side, and let me just in this connection point out that you have during the course of this trial rejected the Soo Line exhibits, which are exhibits, Plaintiff's Exhibits 11, 12 and 13.

"These three documents were submitted in our list of documents that we intended to offer as Item 43, and there was an objection made by the defendant railroads joined in by counsel for the other defendants, that these documents were internal documents, immaterial and hearsay, and on page 9 of this memorandum of

opinion that you rendered on December 2, 1959, on page 5, rather, those objections are overruled.

"The Soo Line memoranda are to be considered admissible there and Your Honor has changed his ruling again, and it occurs to me, and I say it again with all due deference, that no favorable ruling that we have gotten in the past from you will stick, but every unfavorable ruling will be reiterated, and I don't think that is a fair trial." (Trans. 959-960)

Specification Number 3

Repeatedly during the course of the trial Lee A. Freeman conducted himself in a contumacious manner by employing a tone of voice and an attitude indicating contempt and defiance of the Court, by sneering and laughing on occasions when the Court ruled against him and by disregarding admonitions of the Court with respect to his conduct before the jury.

14 *Specification Number 4*

On January 26, 1960, in the presence of the Court before the jury was impaneled during the course of a hearing on its memorandum dated December 4, 1959, which constituted the Court's rulings on the admissibility of numerous documents which had been tendered by the plaintiff for use in the trial and objected to by the defendants, Mr. Freeman, among other things, referred to several of the Court's December 4th rulings as demonstrating "a sardonic sense of humor" (page 52, Trans. of Proceedings, January 6, 1960), thereby charging the Court with bitter, heartless, scornful, insincere and disdainful conduct. The Court referred specifically to the above quoted statement of counsel (at page 9 of the memorandum), as well as to other abusive remarks of counsel, and ruled that there was no merit to counsel's objections to and arguments upon the Court's pre-trial memorandum, dated December 4, 1959 aforesaid.

Specification Number 5

On April 21, 1960, prior to the selection of a jury, although Thomas C. McConnell, by his own statement, had read the transcript of the previous hearing in the cause at which the Court of its own motion suggested that consideration be given to separation of the issue of public injury for trial (Trans. 4, 5), and although no such suggestion or motion had been made by any attorney for any defendant at any hearing in the case, Mr. McConnell stated as follows:

> "This should be a forum where we could have that lawsuit tried without being hemmed in and penned in with a lot of artificial restrictions, dreamed up by counsel on the other side, whereby we are not given an opportunity to tell this jury what this lawsuit is about."

Specification Number 6

On April 27, 1960, in the presence and hearing of the jury, after the Court had instructed the attorneys for plaintiff to refrain from repeatedly asking questions on subjects which the Court had ruled was not admissible, in the presence of the jury as distinguished from an offer of proof outside the presence of the jury (Trans. 578, 580), the following occurred:

> "By Mr. McConnell: Now you are trying to tell us we can't ask these questions. We have a right to ask these questions, and until we are stopped from asking these questions we are going to ask them, because it is in our prerogative in doing it.
>
> "By the Court: I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.
>
> "By Mr. McConnell: We have a right to ask them.
>
> "By the Court: You can offer proof on it.
>
> "By Mr. McConnell: We have a right to ask questions which we offer on this issue, and Your Honor can sustain their objection to them. We don't have a

right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us." (Trans. 581)

Specification Number 7

Repeatedly during the course of the trial Thomas C. McConnell conducted himself in a contumacious manner by employing a tone of voice and an attitude indicating contempt and defiance of the Court and disregarding admonitions of the Court with respect to his conduct before the jury.

/s/ *J. H. Miner*
Judge

Jun 30 1960

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IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

MOTION TO ARREST JUDGMENT AND ORDER OF JUNE 30, 1960, AND TO VACATE THE SAME AND FOR A TRIAL BEFORE AN IMPARTIAL JUDGE
(filed Jul 7 1960)

Now comes Thomas C. McConnell and moves to arrest and vacate the order of contempt and certificate entered against him herein on June 30, 1960, by Judge Julius H. Miner, and for a trial before an impartial judge, and for reason shows:

1. That the contempt order and certificate was untimely and this court has lost jurisdiction to deal with the alleged contempt summarily since the alleged contempt occurred several months prior to the entry of the contempt order and certificate and on at least two occasions the trial judge stated that there was no emergency about the contempt matter; that it is only where there is a need

for "immediate penal vindication of the dignity of the
18 court" that the court may properly exercise summary powers under Rule 42(a) of the Federal Rules of Criminal Procedure

2. That this defendant was entitled to have the issues asserted by said judge as contempt of court tried before an impartial judge pursuant to Rule 42(b) of the Federal Rules of Criminal Procedure; that in the instant case, the trial judge not only entered specifications of contempt long after the alleged contumacious acts occurred, but acted as witness and prosecutor without permitting this defendant any hearing and then proceeded to act as a judge and convict this defendant of such charges without due process of law, contrary to the rights of this defendant as preserved to this defendant by the federal statutes and the Constitution of the United States.

3. That one of the items alleged as contumacious consisted of the remarks of Lee A. Freeman on January 26, 1960, almost four months before the trial of the instant case, and in his specifications the presiding judge refers to Freeman's remarks as "charging the Court with bitter, heartless, scornful, insincere and disdainful conduct"; that these remarks disclose that the court is dealing with the alleged contempt as a personal attack upon himself and he thereby becomes a party involved in the controversy and, as stated by the Supreme Court in the case of *Offutt* v. *United States*, 348 U.S. 11, 13-15:

19 "A judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place."

Here, unbeknownst to this defendant, Judge Miner was nursing a grievance against trial counsel months before the trial started, and was obviously prejudiced against

Parmelee's lawyers; that before the jury was called in, a motion for a change of venue was made before Judge Miner which he summarily denied, and it now appears that at that time Judge Miner knew that he was prejudiced and could not afford the plaintiff a fair trial, and obviously had no right to try this defendant for contempt not only because the alleged contempt represented an alleged attack upon the trial judge, but also because of the prejudice of the trial judge against plaintiff's counsel; that the decisions of the Supreme Court clearly indicate that if speed is not a crucial factor, fundamental fairness and the desirability of maintaining public respect for the judicial office compel the appointment of an impartial tribunal to hear charges of contempt. Thus, the Supreme Court of the United States held in *Offutt* v. *United States, supra,* that if a contempt is alleged to have been committed in the presence of the judge and the judge postpones his treatment of the contempt until a later time, he must disqualify himself from presiding at a later contempt hearing.

4. That the acts of this defendant, alleged by the presiding judge to have been "contumacious conduct" under Specification Number 5, occurred on April 21, 1960, over two months prior to the entry of the instant order and prior to the selection of a jury in this case; that the acts and remarks of this defendant set forth in such specification not only were not contumacious as is hereinafter shown, but could only have been dealt with summarily at that time, and that too great a lapse of time has occurred to permit this court to deal with the matter under Rule 42(a); that such remarks were not contumacious, but constituted legitimate legal argument. Thus, the court quotes from a part of the oral argument made by this defendant on the issue of public economic injury as follows:

"This should be a forum where we could have this lawsuit tried without being hemmed in and penned in with a lot of artificial restrictions dreamed up by counsel on the other side whereby we are not given an opportunity to tell this jury what this lawsuit is about."

That the entire argument shows beyond question that the restriction this defendant was talking about was the recognition of the issue of public economic injury as a relevant and proper issue in an antitrust case in the face of two decisions of the United States Supreme Court which had ruled decisions of the United States Supreme Court which had ruled in complete conformity with this defendant's remarks; that the only case relied on by the trial judge to contravene counsel's statement was the so-called *Radiant Burner* case, decided by the Court of Appeals for this Circuit, which has since that time been accepted for review on writ of certiorari by the Supreme Court and
21 thereby has lost all value as a precedent; that the issue, just as this defendant asserted, was first raised in a motion to dismiss filed by defendants' counsel and was argued in their briefs and their argument, and was overruled by the late Philip L. Sullivan, Judge of this court; that this defendant's statement was factually true and legitimately argued; that there was no charge, inference or intendment made that the subject of the issue had been other than properly raised and with all due respects to the proprieties of proper legal procedure and that no attack on the trial judge or opposing counsel was intended or even thought of in the making of such remark; that no charge was ever made or intended or even thought of and that no statement was made to the court which in any way affected the integrity or the propriety of the court's raising the issue; that the argument was direct to the point that the court's handling of the matter was clearly er-

roneous, contrary to all the decisions of the Supreme Court which had dealt with the matter and could not be sustained legally and no other point was made; that in the case of *Offutt* v. *United States*, 348 U. S. 11, 13-15, in speaking of the power of a judge to punish summarily for contempt, the Supreme Court said:

> "The power thus entrusted to a judge is wholly unrelated to his personal sensibilities, be they tender or rugged. But judges are also human and many in a human way quite unwittingly identify offense to self with obstruction to law. Accordingly, this Court has deemed it important that district judges guard against the easy confusion by not sitting themselves in judgment upon misconduct of counsel where the contempt charged is entangled with the judge's personal feeling against the lawyer."

22 • • • (*sic*)

23 5. That the occurrence specified as Number 6 in the contempt order occurred on April 27, 1960, over two months prior to the entry of the instant order and could only have been dealt with under Rule 42(a) at that time and, in any event, the instant order comes too late to be entered as a summary order; that the right asserted by this defendant in such specification and to which this court takes exception was necessary in making out an offer of proof as is shown by the following facts; that the instant case charges that Hugh W. Cross prostituted his high office of Commissioner of the Interstate Commerce Commission by utilizing the power of that office before which the railroads had proceedings pending involving millions of dollars to importune the railroads to drop the services of the Parmelee Company and substitute the services of Keeshin's company, with which company Cross intended to go to work; that the defendants made a motion to dismiss these charges from the case, which motion was overruled

by the late Judge Philip L. Sullivan; that under the rulings of the presiding judge in the instant case, counsel for plaintiff were told that they could not ask any questions concerning the defendant Cross; that when so limited, this defendant offered to stipulate with defense counsel that an offer of proof as to Cross and the conspiracy issues be made outside the presence of the jury; that defend-
24 ants' counsel refused to so stipulate and asserted that under Rule 43(c) of the Federal Rules of Civil Procedure, the only way an offer of proof could be made was to put the witness on the stand and ask a question and, only after an objection was sustained to the question, could an offer of proof be made outside the presence of the jury; that in the face of such objection, this defendant believed and still believes that the only way a record on appeal could be made was to ask the question and have an objection sustained to the question; that in this situation, this defendant stated to the court, as the court alleges:

> "Now you are trying to tell us we can't ask these questions. We have a right to ask these questions. We are going to ask them because it is our prerogative in doing it.
>
> "By the Court: I am now stopping you from asking the questions about conversations with Mr. Cross because I have ruled specifically, definitely and completely that it is not an issue in this case."

That Judge Sullivan had ruled that it was an issue in the case and the presiding judge had stated that he was not overruling Judge Sullivan's decision; that later the presiding judge admitted that plaintiff's counsel had a right to make an offer of proof on this issue and, in an opinion rendered at the end of the case, said:

> "The complaint also alleged that in order to induce the railroads to vote in favor of Keeshin's proposal, Cross promised to give them favorable consideration

in matters pending before the Interstate Commerce Commission and that he did give them favorable consideration. It is to be observed that these allegations found no support in plaintiff's elaborate offers of proof * * *."

25 That there is no such allegation in the complaint, but the court's statement shows that it was necessary for this defendant to insist in the firmest possible manner on the plaintiff's right to make offers of proof because any imperfections in said offer would be and were used against the plaintiff's case by the presiding judge; that in these circumstances, to assert the client's right without fear of intimidation was not only not contumacious, but was absolutely necessary in order to perform defendant's duty to his client.

6. That the acts set forth in Specification Number 7, as well as the adjectives used at pages 1 and 2 of the order, are conclusory in nature and mere conclusions of fact and do not conform to the requirements as to specifications of the facts which are set forth in Rule 42(a) of the Federal Rules of Criminal Procedure. Further, the record does not support the court's statement that this defendant "conducted himself in a contumacious manner by employing a tone of voice and an attitude indicating contempt and defiance of the Court and disregarding admonitions of the Court with respect to his conduct before the jury."

7. That this defendant is not only entitled to a trial and a hearing before an impartial judge, but also before a jury under the Fifth and Sixth Amendments of the Constitution of the United States and, if granted such trial, this defendant is prepared to show that he did not, as al-

26 leged, embark upon a course of unprofessional or unethical conduct, nor did he attempt to intimidate or insult the presiding judge or to manifest defiance towards the court or to foist his will upon either the court or the

jury, nor did he attempt to dominate the course of procedure in the court, but this defendant acted without fear or favor in an attempt to protect the rights of his client in this case and in order to make a record on appeal so that the case could be properly reviewed and the manifest error of the trial court overruled in the Court of Appeals for the Seventh Circuit; that this defendant had no other purpose and acted for no other motive.

8. That in the contempt order and certificate this court stated that "the acts * * * constituted contamacious conduct of so grave a character as to make imposition of fines insufficient punishment," and this court has sentenced defendant to a ten-day jail sentence as a penalty for each alleged contempt. But in open court the judge announced that such jail sentence would be suspended if this defendant would file a petition of retraction and apology; that this defendant is accused of unethical and unprofessional conduct by such trial judge, which charge is denied and is not supported by any evidence; that this defendant has practiced law for almost thirty-six years in this court, in the courts of this state, in other federal courts and in the Supreme Court of the United States, in accordance
27 with the canons of ethics of the legal profession; that the option of apologizing for something of which this defendant is not guilty or of going to jail is an option which only a coward would accept, and it is refused by this defendant without any equivocation whatever; that this defendant's acts and conduct were within the scope of his duty to protect the legal rights of his client and in no instance was there any intent by this defendant to in any wise be disrespectful of the trial judge or to reflect upon his authority.

For all of the above reasons, this defendant asks that the order of contempt be vacated as against him and likewise against his co-counsel, Lee A. Freeman, and that the

charges of contempt as made by the presiding judge be sent to the Executive Committee of this court for assignment for hearing before another judge on issues made, pursuant to the provisions of Rule 42(b) of the Federal Rules of Criminal Procedure.

Thomas C. McConnell
Thomas C. McConnell

Thomas C. McConnell
134 South LaSalle Street
Chicago 3, Illinois
RAndolph 6-9131

28

IN THE UNITED STATES DISTRICT COURT

Thursday, July 7, 1960
Present: Honorable Julius J. Hoffman, District Judge

• • (Caption—No. 56 C 323) • •

Comes Thomas C. McConnell and presents his motion to arrest the judgment and order herein of June 30, 1960, and to vacate the same, and for a trial before an impartial judge, and it is

Ordered that said motion be entered and be and hereby is continued before Judge Julius H. Miner.

29

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

MOTION TO ARREST JUDGMENT AND ORDER OF JUNE 30, 1960, AND TO VACATE THE SAME AND FOR A TRIAL BEFORE AN IMPARTIAL JUDGE.
(Filed Jul 7 1960)

Now comes Lee A. Freeman and moves to arrest and vacate the order of contempt and certificate entered against

him herein on June 30, 1960, by Judge Julius H. Miner, and for a trial before an impartial judge, and for reason shows:

1. That the contempt order and certificate was untimely and this court has lost jurisdiction to deal with the alleged contempt summarily since the alleged contempt occurred several months prior to the entry of the contempt order and certificate and on at least two occasions the trial judge stated that there was no emergency about the contempt matter; that it is only where here is a need for "immemediate penal vindication of the dignity of the court" that the court that the court may properly exercise summary powers under Rule 42(a) of the Federal Rules of Criminal Procedure.

2. That this defendant was entitled to have the issues asserted by said judge as contempt of court tried before an impartial judge pursuant to Rule 42(b) of the Federal Rules of Criminal Procedure; that in the instant case, the trial judge not only entered specifications of contempt long after the alleged contumacious acts occurred, but acted as witness and prosecutor without permitting this defendant any hearing and then proceeded to act as a judge and convict this defendant of such charges without due process of law, contrary to the rights of this defendant as preserved to this defendant by the federal statutes and the Constitution of the United States.

3. That one of the items alleged as contumacious consisted of the remarks of Lee A. Freeman on January 26, 1960, almost four months before the trial of the instant case, and in his specifications the presiding judge refers to Freeman's remarks as "charging the Court with bitter, heartless, scornful, insincere and disdainful conduct"; that these remarks disclose that the court is dealing with the alleged contempt as a personal attack upon himself and

he thereby becomes a party involved in the controversy and, as stated by the Supreme Court in the case of *Offutt* v. *United States*, 348 U.S. 11, 13-15:

31 "A judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place."

Here, unbeknownst to this defendant, Judge Miner was nursing a grievance against trial counsel months before the trial started, and was obviously prejudiced against Parmelee's lawyers; that before the jury was called in, a motion for a change of venue was made before Judge Miner which he summarily denied, and it now appears that at that time Judge Miner knew that he was prejudiced and could not afford the plaintiff a fair trial, and obviously had no right to try this defendant for contempt not only because the alleged contempt represented an alleged attack upon the trial judge, but also because of the prejudice of the trial judge against plaintiff's counsel; that the decisions of the Supreme Court clearly indicate that if speed is not a crucial factor, fundamental fairness and the desirability of maintaining public respect for the judicial office compel the appointment of an impartial tribunal to hear charges of contempt. Thus, the Supreme Court of the United States held in *Offutt* v. *United States*, *supra*, that if a contempt is alleged to have been committed in the presence of the judge and the judge postpones his treatment of the contempt until a later time, he must disqualify himself from presiding at a later contempt hearing.

32 4. That the act of this defendant alleged by the presiding judge to have been contumacious conduct under Specification Number 1 occurred on April 28, 1960, over two months prior to the entry of the instant order. The remark of this defendant set forth in such Specification was not contumacious.

The circumstances under which the remark occurred were these: The court, prior to the impaneling of the jury announced that the trial would be segmented and only the issue of public economic injury would be tried before the jury and then the conspiracy issue and then presumably other issues. This defendant sincerely urged that the public economic injury was an irrelevant isues and that a segmented jury trial was erroneous. We were willing to stand on that position by suggesting a stipulation whereby the first twelve individuals would be impaneled as a jury; we would not offer proof of public economic injury but only proof of conspiracy and request that the court direct a verdict against the plaintiff, Parmelee, as the basis of appeal to the United States Court of Appeals. Weeks of trial and the waste of the time of this court, the jury and counsel would have been avoided. The defendants in the principal case, however, refused to so stipulate but instead insisted upon every procedural technicality required in making an offer of proof of rejected evidence. This defendant proceeded to trial solely with the objective of
33 making a proper record for appeal. When during the course of trial, the judge stated that no matter what jury verdict was returned on the issue of public economic injury, he would still dismiss the action, we again sought to save valuable court time and asked the trial judge to direct a verdict against Parmelee. At no time did this defendant seek to procure a favorable jury verdict by disrespect of the court or disregard of his orders or position. Defendant sought only to make our record for appeal and to protect his client's position.

During the course of plaintiff Parmelee's presentation of proof on the narrow issue to which the court had limited the trial, plaintiff offered a letter from the attorney for defendant Keeshin and Railroad Transfer Service, Inc. to the Mayor of the City of Chicago, in which said attorney

stated as an admission against interest that the proposed transfer service by Keeshin and Railroad Transfer Service, Inc. would be limited in service to the public in various respects in comparison to the then existing comprehensive Parmelee service, and that there was "a wide cleavage" in services of which the public was not generally aware. The trial court sustained objections to the presentation of this letter in evidence and later sustained objections to questions seeking to elicit the facts with respect to those differences in service. This defendant felt that these rulings were in error. The remark contained in Spe-
34 cification Number 1 that "This [the ruling] is crazy" was made by the defendant while conferring with his co-counsel, Mr. McConnell. The remark was not made to the court or in open court, as the record clearly indicates, nor was the remark intended as any disrespect. In fact, the remark was not one that should have been transcribed. Unfortunately, due to the heat of the argument, counsel's voice carried.

Later, after the jury had been dismissed and in discussion with the court, the trial judge indicated his complete understanding of the circumstances under which the above remark was made and the intention of counsel. The following colloquy occurred at pages 929-933 of the trial transcript:

> "By Mr. Thompson: I would just like to say that I appreciate that it is difficult perhaps for counsel for the plaintiff, sitting within three or four feet of the jury, to confer at all without conveying it in such a fashion the jury will overhear it.
>
> "I overheard one of the remarks this afternoon, clear over in my seat, which is twice as far away as the jury is.
>
> "By Mr. Freeman: You don't have to say any more, Mr. Thompson. If I did do that, it was certainly inadvertence, and we will, if there is any con-

ferring, it will be in the lightest whisper. We certainly understand what you suggest is entirely proper.

"By The Court: I think that covers that with the jury and with counsel. • • •

"I said to the jury I am not impressed by those matters. I don't feel offended. It has no impression upon the jury and I want them to disregard everything. I don't want to get into a controversy with either side. • • •

35 "I realize this: It is a very important piece of litigation, important to both sides, and counsel sometimes lose themselves in the heat of passion and say something a little too loud. You have got to be understanding of those matters.

"By Mr. Freeman: You can understand my reaction to the ruling. It was an adverse ruling, and what I was saying was that I thought it was wrong. Of course I did.

"By The Court: I don't blame you for thinking it is wrong. I don't blame either side for disagreeing with me. I am as anxious to make as good and clear a record as I think is proper for the Court of Appeals to review."

36 5. The occurrence specified as number 2 in the contempt order occurred on April 29, 1960, over two months prior to the entry of the instant order and occurred outside of the presence of the jury. This specification sets forth five paragraphs of oral argument in which this defendant commented on the court's ruling as to the admissibility of certain documents in the light of the court's previous memorandum of December 4, 1959. In that memorandum the court had ruled admissible certain documents listed by plaintiff, Parmelee, over the objections of the defendant railroads. In the portion of the oral argument quoted in the contempt order, this defendant was protesting against a series of rulings in which the court had departed from the memorandum where objections to the exhibits had previously been overruled. It was defendant's

right and duty to protest against a series of adverse rulings apparently inconsistent with prior rulings of the court and to inquire what significance was to be accorded the court's earlier memorandum. The language used by this defendant in his oral argument was restrained and deferential. It is regretted that this court now finds the argument offensive, a reaction that was not expressed at the time. As an advocate and as custodian of a client's interest, however, defendant's duty would not permit less to be done were the occasion to arise again.

37 ' 6. Specification number 3 charges generally that during the course of the trial defendant employed "a tone of voice and an attitude indicating contempt and defiance of the Court, by sneering and laughing on occasions when the Court ruled against him and by disregarding admonitions of the Court with respect to his conduct before the jury." Both the record and defendant's recollection are devoid of support of this charge and the charge must be denied categorically. The record is devoid of any references to such conduct either by the court or by opposing counsel, as well as any admonitions by the court to this defendant concerning said conduct to say nothing of a disregard of such admonitions.

7. Specification number 4 has to do with remarks made by this defendant on January 6, 1960, almost six months prior to the entry of the instant order and could only have been dealt with summarily under Rule 42 (a) at that time. The instant order comes too late to be entered as a summary order. Further, during the course of the argument on January 6, 1960 and in a later memorandum of the court on March 10, 1960, commenting upon the argument, no reference is made by the judge to any alleged contempt or disrespect of the judge. It is pertinent in this regard that during the course of argument the presiding judge made the following significant remarks:

a) That a multitude of documents had been held to be inadmissible prior to trial even though the judge had not examined or even seen the documents. On page 53 the court said:

38 "Of course, I have not had a chance to examine the documents. I never purported to make any such statement. They were bulked in thousand lots, and I merely passed upon the propriety and admissibility of these lots in wholesale bundles."

b) That he was not aware of a pretrial hearing before Judge Robson and had not read the transcript of that hearing. On page 66, the following colloquy ocurred:

"By Mr. McConnell: We had a pre-trial hearing on this matter before Judge Robson, as your Honor knows.

"By The Court: No, I don't know.

"By Mr. McConnell: We spent a lot of time there.

"By The Court: I get it now, but I didn't know anything about it.

"By Mr. McConnell: We had a full transcript made of it and arguments pro and con on the different areas of proof.

"By The Court: Was it ever reduced to writing?

"By Mr. McConnell: Yes, it was, and I am going to read now from the transcript.

"By The Court: All right."

c) That while he had ruled inadmissible many documents which were admissions against interest, he would change that ruling and admit them in evidence. In this respect the court's remarks are repeated throughout the transcript and occurred as follows:

"By The Court: I would admit legally and almost in blanket form admissions against interest as admissible.

• • •

"By The Court: In any form and in any shape and manner. The defendant in his own right makes an admission orally or in writing against his interest pertaining to the issues in the case before me, and I would have to be blind or dumb to exclude that from the record.

39 "If any of those are included in there, in passing upon thousands of bundles, you will find probably a good many of them, and I can't predict now or prejudice it, but I am positive that if some individual documents were brought before me and were brought within the confines of the propriety of evidence, why, of course I would admit them." (Page 57)

"By The Court: I will say to you now unequivocally that if any documents are made as admissions against anybody's interest on trial before me, they will go in.

"If I have ruled against them, I never intended to." (Page 65)

d) The court admitted the possible commission of error in the preparation of his pretrial memorandum in view of his failure to have before him any of the documents, as well as the various briefs and arguments made by counsel and admitted that he may have held inadmissible documents to which objections had not been made. He said at pages 61 and 62:

"By The Court: I will check the pleadings again. If I have done you an injustice, I will correct it. There is no question about it, in the light of your argument. I don't want to blanket you out.

• • •

"By The Court: I will plead guilty. If there are documents before me which I included and to which there are no objections, it was an oversight. It was inadvertence or a misunderstanding of the motion before me. Can I go any further than that?"

e) The court at the conclusion of plaintiff's arguments acknowledged the seriousness of the position presented by the plaintiff and sought to justify his position as follows. He said on page 64:

40 "This is all new to me. This whole argument is new to me. When I ruled upon the documents, I merely ruled upon what you have in the confines of your papers, the pleadings there, nothing else."

And then on pages 70 and 71:

"By The Court: I always want to hear you in open court. If I made any mistake, I will correct it, if I made any mistake that was inadvertent or because I didn't understand the isues before me.

"I didn't know that Judge Robson had had a pretrial and gone into all of these matters. I want to check it and find out. It is difficult. • • •

"It is the first time that I know of after twenty years on the bench of throwing to the Judge fourteen bundles of records and documents and saying to him, 'Do you agree to disagree with that area, with that type of proof?'

"It is not intended that the Judge should examine each document and say, 'That belongs in this area and this doesn't.' It is up to you to bring it before me.

"By Mr. McConnell: The law says you can't make a blanket offer of documents. You have to offer them individually.

"By The Court: There is a perfect misunderstanding between you lawyers and not the Court, because the matter came before me on these documents, and I went into them because—exactly as these documents, I thought, required me to do."

7A. That the adjectives used on pages 1 and 2 of the order are conclusory in nature and mere conclusions of fact and do not conform to the requirements as to specifications of facts required by Rule 42 (a) of the Federal Rules of Criminal Procedure. This defendant em-

41 phatically denies the general charge made that he pursued "a course of unprofessional, unethical, intimi-

dating, insulting, defiant, unfair and improper behavior, to foist [his] will upon the Court and jury and to dominate the course of procedure herein without regard to an honest and impartial administration of justice," and respectfully submits that such general charge is without foundation and not supported by specifications in the record as a whole.

8. That this defendant is not only entitled to a trial and a hearing before an impartial judge, but also before a jury under the Fifth and Sixth Amendments of the Constitution of the United States and, if granted such trial, this defendant is prepared to show that he did not, as alleged, embark upon a course of unprofessional or unethical conduct, nor did he attempt to intimidate or insult the presiding judge or to manifest defiance towards the court or to foist his will upon either the court or the jury, nor did he attempt to dominate the course of procedure in the court, but this defendant acted without fear or favor in an attempt to protect the rights of his client in this case and in order to make a record on appeal so that the case could be properly reviewed and the manifest error of the trial court overruled in the Court of Appeals for the Seventh Circuit that this defendant had no other purpose and acted for no other motive.

42 9. That in the contempt order and certificate this court stated that "the acts * * * constituted contumacious conduct of so grave a character as to make imposition of fines insufficient punishment," and this court has sentenced defendant to a ten-day jail sentence as a penalty for each alleged contempt. But in open court the judge announced that such jail sentence would be suspended if this defendant would file a petition of retraction and apology; that this defendant is accused of unethical and unprofessional conduct by such trial judge, which charge is denied and is not supported by any evidence; that this

defendant has practiced law for almost twenty-seven years in this court, in the courts of this state, in other federal courts and in the Supreme Court of the United States, in accordance with the canons of ethics of the legal profession; that the option of apologizing for something of which this defendant is not guilty or of going to jail is an option which only a coward would accept, and it is refused by this defendant without any equivocation whatever; that this defendant's acts and conduct were within the scope of his duty to protect the legal rights of his client and in no instance was there any intent by this defendant to in anywise be disrespectful of the trial judge or reflect upon his authority.

For All Of The Above Reasons, this defendant asks that the order of contempt be vacated as against him and
43 likewise against his co-counsel, Thomas C. McConnell, and that the charges of contempt as made by the presiding Judge be sent to the Executive Committee of this court for assignment for hearing before another judge on issues made, pursuant to the provisions of Rule 42 (b) of the Federal Rules of Criminal Procedure.

Lee A. Freeman
Lee A. Freeman

Lee A. Freeman
105 S. LaSalle Street
Chicago 3, Illinois
An. 3-6939

44

IN THE UNITED STATES DISTRICT COURT

Thursday, July 7, 1960
Present: Honorable Julius J. Hoffman,
District Judge

• • (Caption—No. 56 C 323) • •

Comes Lee A. Freeman and presents his motion to arrest the judgment and order herein of June 30, 1960, and to vacate the same, and for a trial before an impartial judge, and it is

Ordered that said motion be entered and be and hereby is continued before Judge Julius H. Miner.

45

IN THE UNITED STATES DISTRICT COURT

Thursday, July 7, 1960
Present: Honorable Julius H. Miner,
District Judge

• • (Caption—No. 56 C 323) • •

Come Lee A. Freeman and Thomas C. McConnell and present their motions to arrest and vacate the order of contempt and certificate entered against them herein on June 30, 1960 by this Court and for a trial before an impartial judge, and it is

Ordered that said motions be entered and be and hereby are continued to September 15, 1960 at 10 A.M.

45a

United States of America—
Northern District of Illinois—ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby cer-

tify as part of the record on appeal to the United States Court of Appeals, for the Seventh Circuit, in the cause entitled: Parmelee Transportation Company, Plaintiff vs. John L. Keeshin, *et al.*, Defendants, No. 56 C 323, (In the Matter of the Criminal Contempt of Thomas C. McConnell and Lee A. Freeman, the following, to wit:

Clerk's filed copy of the transcript of proceedings had before the Honorable Julius H. Miner, Judge and filed by the Official Court Reporter, *viz*:

Transcript of July 7, 1960, filed September 30, 1960 and Transcript of September 15, 1960, filed October 27, 1960.

filed among the records of the said court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid (Seal) Court at Chicago, Illinois, this 28th day of October, 1960.

Roy H. Johnson
Clerk
By Gizella Butcher
Deputy Clerk

1

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

TRANSCRIPT OF PROCEEDINGS
(Filed September 30, 1960)

had in the above-entitled cause before the Honorable Julius H. Miner, one of the Judges of said Court, in his court room in the United States Court House, Chicago, Illinois, on Thursday, July 7, 1960, at the hour of 10:30 o'clock a.m.

Present:

Mr. Lee A. Freeman, (Suite 514, 105 South LaSalle Street, Chicago 3, Illinois),

Mr. Thomas C. McConnell, and
Mr. Francis J. McConnell, (Suite 1110, 134 South LaSalle Street, Chicago 3, Illinois)

Hon. Robert Tieken, United States Attorney (United States Court House, Chicago, Illinois)

Mr. John P. Lulinski, Assistant United States Attorney (United States Court House, Chicago, Illinois)

Mr. Thomas James, Assistant District Attorney (United States Court House, Chicago, Illinois)

2 The Clerk: 56 C 323, Parmelee Transportation Company against John L. Keeshin, *et al.*, motion to arrest judgment and order of June 30, 1960, and to vacate the same and for a trial before an impartial judge.

Mr. James: Good morning, your Honor. The United States Attorney was served with notice in this matter. We believed, as a courtesy to the Court, that we should respond before Judge Hoffman this morning. However, we do not believe that we are a proper person to be served at this time.

Before Judge Hoffman we stated that we believed that this should be transferred immediately to your Honor for such disposition as you would care to make.

The Court: I will hear it.

Mr. James: I don't know. At this time the United States Attorney is not prepared to argue any of the points of this motion.

The Court: I will give you time. There won't be any problem on that. What is your pleasure, counsel?

Mr. Thomas McConnell: Well, it is your Honor's pleasure.

The Court: Pardon?

Mr. Thomas McConnell: I say, it is your Honor's pleasure.

3 The Court: I have read the petition. Do you want to be heard now?

Mr. Tieken: We are not in this matter, if the Court please. If the Court wishes the government to represent the Court in this matter—

The Court: I will ask you to represent the Court.

Mr. Tieken: We would then like to have time within which to familiarize ourselves with the petition and with the order on which it was based.

Mr. Thomas McConnell: May I say this, if your Honor please: The reason that this motion is filed at this time is that when we examined your Honor's order, we came to the conclusion that the mere stay or suspension of the sentence did not protect us from the running of the time on appeal and that the only way that that could be brought over until the September 15th date which your Honor mentioned—

The Court: Well, I told you then, and I meant it and I will tell you now, and I mean it, I want to protect your rights. There is no problem.

Mr. Thomas McConnell: That is the only thing we are trying to do.

The Court: There is no technicality on that. I wanted to protect the record. I wanted to protect you and protect the Court. There is no emergency about it. I say to you

4 now, if you have any kind of an order that you wish to enter to protect your rights on appeal, or any other rights you have, I will enter it.

Mr. Thomas McConnell: That's all we have to say on that.

Now, on the other, I want to say this: Both Mr. Freeman and myself have given very, very serious consideration to

this, as your Honor knows. This is a very serious matter, so far as we are concerned.

The Court: I know that.

Mr. Thomas McConnell: I practised law in this Court for thirty-six years; Mr. Freeman has practised twenty-five. We want to say—and we have said it in our motion and we want to say now that never, either by thought, deed or act have we intended to attack your Honor.

Now, I can realize that in the heat of argument here and in the way words are phrased in some instances that your Honor could gain that impression, but never at any time have we meant to attack your Honor's integrity or your Honor's handling of the case except that we have felt—we felt in the trial and we feel now—that we had to make a record for review here. We have felt honestly, as lawyers, that to do that, we had to take certain steps.

Now it may very well be that in the heat of this case that Mr. Freeman and myself raised our voices or did something of that kind which gave your Honor the wrong impression. Certainly, we are perfectly willing to apologize and we want to retract any statement which would charge your Honor with anything in the way of lack of integrity or the handling of this matter. The only thing is, we are placed in this position and we state this in our motion; that in the general language in the charge, we are charged with unprofessional and unethical conduct and we feel and we feel very seriously that to apoligize certainly puts us in a position where we admit lack of integrity before this Court, which we do not feel is justified and we feel we have a right to defend against.

So far as any personalities, so far as any personal feeling toward your Honor, neither of us have any feeling of that kind at all and never have had. All we have tried to do in this case is to properly represent our client.

Now your Honor has had enough experience to know that in a bitterly contested litigation like this, we are dealing with hostile counsel on one side in the Court. We are dealing with it as the thing develops, in the course of the proceedings. We are dealing with it the best we can. We are both experienced lawyers but we can make mistakes, too. But, the mistakes which were made were not mis-
6 takes that were intended for the purpose of attacking your Honor.

That's all I want to make clear to your Honor.

The Court: I have said to you at the outset that I have no ill-feeling. It was the matter of the integrity of the Court that I wanted to protect. Believe me, there is nothing personal in it.

Mr. Thomas McConnell: There was no attack made on this Court and never has been.

The Court: From the words that you have used and the statements that are shown in the record, there isn't any question but that you have exceeded every reasonable limitation in the trial of the case, but I still, certainly, have no malice in my heart, I never did in my life. I have been on the bench twenty-three years and I have never done this before.

There is one thing one must do—protect the record. Over the objections of the defense counsel, I think that all the way down the line I have let you make your record completely. There is not a scintilla of evidence, not a statement that will indicate you have been curtailed in any way in the making of your offer of proof. Isn't that right?

Mr. Thomas McConnell: Well, we have made our offers of proof.

The Court: Completely.

7 Mr. Thomas McConnell: We felt then and we do feel now that in the heat of the trial we had to take certain steps to protect our rights. That's all we are trying to do.

The Court: All right. I want you to protect the record on appeal. Let me give it some thought. I accept your statement in good faith, there is no question about it.

Mr. James: Your Honor, since you have requested the government to represent you in this matter, we would like thirty days within which to answer this motion.

The Court: Let me finish this, counsel. I want to protect them on the record.

I don't want to do anything that will in any way be interpreted or accepted by the Court of Appeals as a limitation on your time. I want the record to show that.

Suppose we enter a motion to vacate? That will protect you.

Mr. Thomas McConnell: Yes. That is the motion.

The Court: Pardon?

Mr. Thomas McConnell: That is the motion we presented.

The Court: All right. I will enter your motion.

Mr. Thomas McConnell: I think we are protected now.

8 The Court: I will enter your motion to vacate.

Mr. Freeman: Would you make it two motions, your Honor? We have filed two motions, your Honor.

The Court: That is all right. I want to protect you. I want to consider it.

I would much prefer, when you file your petition, that you state a retraction and apology. I will help you in every way I can, believe me. I don't want any hardship upon either of you. It is with great reluctance that I have done what I have done. I do not penalize lawyers unduly. I don't want to punish them unnecessarily and harshly. It has never been my practise and it will not be in this case, but I think the most insulting remarks, the most abusive words used are on the record and I pointed them out to you.

The Court resented it, as I told you at the time. This is not new. I told you when the remarks were made that I was going to hold you in direct contempt. The record so shows.

Your petition alleging undue delay hasn't any real merit to it, but with the assurance I have given you, I will enter the two motions, the one to vacate and this motion, a separate motion to vacate the entire order, and I will continue it until the same day we set before.

Mr. Freeman: September 15th.

9 The Court: And then you can answer this petition if you wish. I don't think you have to. You can talk to counsel if you want to. What was the date—September 15th?

Mr. Freeman: September 15th.

The Court: The motion will be entered to vacate the order as of June 30th.

Mr. Freeman: The order of June 30th.

The Court: Continue it, also. That will protect you for any purpose, every purpose.

Mr. James: We would like thirty days within which to answer or otherwise plead.

The Court: I would rather not have you answer it, in the light of counsel's statement. It may be a narrow exchange of views. Maybe we would rather avoid more pleadings if we come to some sensible, fair understanding.

10 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

CERTIFICATE

I Hereby Certify that the proceedings had at the hearing of the above-entitled cause before the Hon. Julius H. Miner, on Thursday, July 7, 1960, were reported by me in short-

hand and that the foregoing transcript consisting of pages 1 to 9, inclusive, is a true, correct and complete transcript of my original shorthand notes so taken as aforesaid.

Kay Siboit
Official Reporter, United States District Court, Northern District of Illinois, Eastern Division.

1

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

TRANSCRIPT OF PROCEEDINGS
(filed Oct 7 1960)

had in the above-entitled cause before the Honorable Julius H. Miner, one of the Judges of said Court, in his court room in the United States Court House, Chicago, Illinois, on Thursday, September 15, 1960, at the hour of 10:00 o'clock a.m.

Present:

Mr. Lee A. Freeman (Suite 514, 105 South LaSalle Street, Chicago 3, Illinois)

Mr. Thomas C. McCornell, and
Mr. Francis J. McConnell, (Suite 1110, 134 South LaSalle Street, (Chicago 3, Illinois)

Mr. Robert Tieken, United States Attorney (United States Court House, Chicago, Illinois)

Mr. John P. Lulinski, Assistant United States Attorney (United States Court House, Chicago, Illinois)

2 The Clerk: 56 C 323, Parmelee Transportation Company vs. John L. Keeshin, *et al.*, motion of Lee A. Freeman and Thomas C. McConnell to arrest and vacate the order of contempt and certificate entered against them herein

on June 30, 1960 by Judge Julius H. Miner and for a trial before an impartial judge.

Mr. Freeman: Good morning.

The Court: Good morning.

Mr. McConnell: We are submitting that motion on the papers in support of it.

The Court: All right. I am sorry that you have chosen that course. I have told you several times that I would much prefer the other course, with retraction and apology, with the assurance that I would vacate the entire order, but, if that is your position, I will sign the order.

Mr. McConnell: We feel, your Honor, that we can't admit things that—

The Court: I have mentioned several times that I would prefer the other course of leniency. I have no choice but to sign the order overruling your petition and vacating any motion. You can sign your own recognisance.

Mr. McConnell: We would like, if the Court please, and we have, under the statute, ten days to file our notice to appeal. We would like, if we may have it, a ten-day stay to get our bond on file.

The Court: You can sign your own recognisance. You can have ten days on your own recognisance and you can perfect it in ten days or twenty days.

Mr. McConnell: Thank you very much. We will bring our orders in.

The Court: Ten days stay to perfect the appeal. Do you see any objection, Mr. Tieken, Mr. Lulinski?

Mr. Tieken: No.

Mr. Freeman: What is the amount of the recognisance?

The Court: $100.00.

Mr. Freeman: Shall we file a motion in support of our stay?

The Court: What?

Mr. Freeman: I wonder if you would want us to file written motions in support of a stay of execution.

The Court: No. It is not a technical proceedings.

Mr. Freeman: Thank you.

(Thereupon the Court gave attention to another matter on the call, after which the further proceedings were had herein:)

The Court: Do you want to file something, Mr. Freeman?

Mr. Freeman: Your Honor, I am submitting draft
4 orders that I believe state what you said. One is a stay of execution of sentence, ten days. The other is a recognisance bond for $$100.00. There are four papers, two for me and two for Mr. McConnell.

The Court: All right.

(Which were all of the proceedings had and taken in the above entitled cause on said date.)

5 IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

CERTIFICATE

I Hereby Certify that the proceedings had at the hearing of the above-entitled cause before the Hon. Julius H. Miner, on Thursday, September 15, 1960, were reported by me in shorthand and that the foregoing transcript consisting of pages 1 to 4, inclusive, is a true, correct and complete transcript of my original shorthand notes so taken as aforesaid.

Kay Siboit
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

46

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

ORDER

This cause comes on for hearing on two motions to arrest the judgment and order of June 30, 1960, to vacate the said judgment and order and for trial before an impartial judge made and filed respectively by the defendants Lee A. Freeman and Thomas C. McConnell.

The Court has given lengthy and due consideration to all aspects of these motions and after careful study and reflection and extensive examination is ready to rule thereon. Preliminarily, however, the Court reemphasizes the proffered disposition of this cause upon written retraction and apology by each of the named defendants to the Court. This proffered disposition, including vacating of the order of June 30, 1960, has been refused by each of the defendants.

47 Now, therefore, in consideration of all and singular of the above and foregoing

It is hereby ordered and adjudged that each of the motions to arrest the judgment and order of June 30, 1960, to vacate the said judgment and order of June 30, 1960, and for trial before an impartial judge made and filed respectively by the defendants Lee A. Freeman and Thomas C. McConnell be and the same are hereby denied.

It is Further Ordered And Adjudged that Order of June 30, 1960 forthwith be executed.

Enter: *J. H. Miner*
United States District Judge

Sep. 15, 1960

48

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

ORDER

It Is Hereby Ordered that execution of the sentences heretofore imposed upon Thomas C. McConnell in the above-entitled cause be and the same is hereby stayed for a period of ten (10) days from the date hereof, pending his filing of Notice of Appeal herein.

Enter:

/s/ *J. H. Miner*
JUDGE

Dated: September 15, 1960

49

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

ORDER

On motion of Thomas C. McConnell, pursuant to Rule 46(a)(2) of the Rules of Criminal Procedure, for an order fixing bail pending appeal from the Contempt Order and Certificate, and sentences thereon, entered against him on June 30, 1960,

It Is Hereby Ordered that the said Thomas C. McConnell be set at liberty upon furnishing personal bond without surety in the sum of One Hundred Dollars ($100.00) during the pendency of said appeal in the Court of Appeals for the Seventh Circuit and until the mandate of said Circuit Court shall be issued and filed on said appeal and an order entered thereon.

Enter:

/s/ *J. H. Miner*
JUDGE

Dated: September 15, 1960

50

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

ORDER

It Is Hereby Ordered that execution of the sentences heretofore imposed upon Lee A. Freeman in the above-entitled cause be and the same is hereby stayed for a period of ten (10) days from the date hereof, pending his filing of Notice of Appeal herein.

Enter:

/s/ *J. H. Miner*
JUDGE

Dated: September 15, 1960

51

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 322)

ORDER

On motion of Lee A. Freeman, pursuant to Rule 46(a)(2) of the Rules of Criminal Procedure, for an order fixing bail pending appeal from the Contempt Order and Certificate, and sentences thereon, entered against him on June 30, 1960,

It Is Hereby Ordered that the said Lee A. Freeman be set at liberty upon furnishing personal bond without surety in the sum of One Hundred Dollars ($100.00) during the pendency of said appeal in the Court of Appeals for the Seventh Circuit and until the mandate of said Circuit Court shall be issued and filed on said appeal and an order entered thereon.

Enter:

/s/ *J. H. Miner*
JUDGE

Dated: September 15, 1960

52

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C 323) * *

NOTICE OF APPEAL
(Filed September 21, 1960)

Name and address of appellant: Thomas C. McConnell, 523 Sheridan Road, Kenilworth, Illinois.

Name and address of appellant's attorney: Thomas C. McConnell, pro se, and Francis J. McConnell; McConnell, Paschen & Curtis, 134 South LaSalle Street, Chicago 3, Illinois.

Offense: Criminal Contempt.

Concise statement of judgment or order, giving date and any sentence: On June 30, 1960, the Honorable Julius H. Miner, Judge of said District Court, entered a contempt order and certificate, adjudging appellant in direct contempt and sentencing him to confinement for a period of

53 ten (10) days on each of three specifications described in said contempt order and certificate, said sentences to run concurrently. On July 7, 1960 appellant filed a motion to arrest judgment and order of June 30, 1960, and to vacate the same and for a trial before an impartial judge, which motion was denied on September 15, 1960.

Name of institution where now confined, if not on bail: Appellant was admitted to bail by order of court dated September 15, 1960.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the above-stated contempt order and certificate, and sentences thereon.

Dated: Stepember 20, 1960.

Thomas C. McConnell
Thomas C. McConnell, *pro se*
Francis J. McConnell
Francis J. McConnell,
Attorney for Thomas C. McConnell

McConnell, Paschen & Curtis,
134 South LaSalle Street, #1110,
Chicago 3, Illinois
RAndolph 6-9131

54 United States of America,
Northern District of Illinois—ss:

• • (Caption—No. 56 C 323) • •

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on September 21, 1960 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, and Federal Rules of Criminal Procedure a copy of the foregoing Notice of Appeal was mailed to:

Honorable Kenneth J. Carrick, Clerk
United States Court of Appeals, Seventh Circuit
1212 Lake Shore Drive
Chicago 10, Illinois

Honorable R. Tieken, United States Attorney
450 United States Court House
Chicago 4, Illinois

Attention: John Peter Lulinski, Chief Appellate Division

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 21st day of September, 1960.

Roy H. Johnson
Clerk

By Gizella Butcher
Deputy Clerk

(SEAL)

55

UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

STATEMENT PURSUANT TO RULE 12(d)
(Filed October 5, 1960)

1. The name of the appellee is:
United States of America

2. Counsel for the appellee are:
R. Tieken, United States Attorney
Room 450 U.S. Courthouse, Chicago 4, Illinois

John Peter Lulinski
Charles R. Purcell, Jr.,
Assistant United States Attorneys,
Room 450 U.S. Courthouse, Chicago 4, Illinois

Respectfully submitted,
R. Tieken
R. Tieken
United States Attorney

JPL:ak

56

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

NOTICE OF APPEAL

(Filed September 21, 1960)

Name and address of appellant: Lee A. Freeman, 375 Palos Road, Glencoe, Illinois.

Name and address of appellant's attorney: Lee A. Freeman, pro se, 105 South LaSalle Street, Chicago, Illinois, and Brainerd Currie, University of Chicago, Law School, Chicago, Illinois.

Offense: Criminal contempt.

Concise statement of judgment or order, giving date and any sentence: On June 30, 1960, the Honorable Julius H. Miner, Judge of the said District Court, entered a con-
57 tempt order and certificate, adjudging appellant in direct contempt and sentencing him to confinement for a period of ten (10) days on each of four specifications described in said contempt order and certificate, said sentence to run concurrently. On September 15, 1960, the Honorable Julius H. Miner entered an order denying a motion filed by appellant on July 7, 1960, to vacate said contempt order and arrest judgment.

Name of institution where now confined, if not on bail: Appellant was admitted to bail by order of court dated September 15, 1960.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the above-stated contempt order and certificate, and sentences thereon.

Dated: September 21, 1960.

Lee A. Freeman
Lee A. Freeman, *pro se*
Brainerd Currie
Brainerd Currie
Attorney for Lee A. Freeman

Lee A. Freeman
105 S. LaSalle Street
Chicago, Illinois
An. 3-6939

Brainerd Currie
University of Chicago
Law School
Chicago, Illinois
Mi. 3-0800

58 United States of America,
Northern District of Illinois—ss:

(Caption—No. 56 C 323)

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on September 21, 1960 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, and Federal Rules of Criminal Procedure a copy of the foregoing Notice of Appeal was mailed to:

Honorable Kenneth J. Carrick, Clerk
United States Court of Appeals, Seventh Circuit
1212 Lake Shore Drive
Chicago 10, Illinois

Honorable R. Tieken, United States Attorney
450 United States Court House
Chicago 4, Illinois

Attention: John Peter Lulinski, Chief Appellate Division

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 21st day of September, 1960.

Roy H. Johnson
Clerk

By *Gizella Butcher*
Deputy Clerk

(SEAL)

59

UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

STATEMENT PURSUANT TO RULE 12(d)
(Filed October 5, 1960)

1. The name of the appellee is:
United States of America

2. Counsel for the appellee are:
R. Tieken, United States Attorney
Room 450 U.S. Courthouse, Chicago 4, Illinois
John Peter Lulinski,
Charles R. Purcell, Jr.,
Assistant United States Attorneys,
Room 450 U.S. Courthouse, Chicago 4, Illinois

Respectfully submitted,
R. Tieken
R. Tieken
United States Attorney

JPL:ak

60

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 C 323) • •

STIPULATION AS TO RECORD ON APPEAL

(Filed October 21, 1960

The parties hereto, by their respective attorneys, stipulate and agree that the record on appeal to the United States Court of Appeals for the Seventh Circuit from the Contempt Order and Certificate entered herein on June 30, 1960, against Thomas C. McConnell, shall include and be constituted of the portion of the record, proceedings and evidence in the case as set forth below:

1. Record on appeal in Parmelee Transportation Company, Plaintiff-Appellant, v. John L. Keeshin, et al.,
61 Defendants-Appellees, before the United States Court of Appeals for the Seventh Circuit, Docket Number 13160.
2. Statement required by Rule 12(c) of the United States Court of Appeals for the Seventh Circuit.
3. Minute Order of June 30, 1960.
4. Contempt Order and Certificate entered June 30, 1960.
5. Motion of Thomas C. McConnell to Arrest Judgment and Order of June 30, 1960, and to Vacate the Same and for Trial Before an Impartial Judge, filed July 7, 1960.
6. Minute Order of July 7, 1960, entering Motion of Thomas C. McConnell to Arrest Judgment and Continuing Same to September 15, 1960.
7. Order of September 15, 1960, denying Motion to Arrest Judgment.
8. Motion of Thomas C. McConnell to Stay Execution of Sentences for Ten Days Pending Filing Notices

of Appeal and to Fix Bond, filed September 15, 1960.

9. Minute Order of September 15, 1960, staying execution of sentences for ten days and fixing bond at $100.
10. Notice of Appeal, filed by Thomas C. McConnell on September 21, 1960.
11. Bond of Thomas C. McConnell, filed September 21, 1960.
12. Transcript of Proceedings before Judge Miner on July 7, 1960, and September 15, 1960.

62 13. Certified copy of docket entries commencing May 10, 1960.

14. This Stipulation.

Dated: October 21, 1960.

Thomas C. McConnell
Thomas C. McConnell, *pro se*
Francis J. McConnell
Francis J. McConnell
Attorney for
Thomas C. McConnell

Robert Tieken
Robert Tieken
United States Attorney

McConnell, Paschen & Curtis
134 South LaSalle Street, #1110
Chicago 3, Illinois
RAndolph 6-9131

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IN THE UNITED STATES DISTRICT COURT

(Caption—No. 56 C 323)

STIPULATION AS TO RECORD ON APPEAL

(Filed October 21, 1960)

The parties hereto, by their respective attorneys, stipulate and agree that the record on appeal to the United States Court of Appeals for the Seventh Circuit for the Contempt Order and Certificate entered herein on June 30, 1960, against Lee A. Freeman, shall include and be constituted of the portion of the record, proceedings and evidence in the case as set forth below:

1. Record on appeal in Parmelee Transportation Company, Plaintiff-Appellant v. John L. Keeshin, et al., Defendants-Appellees, before the United States Court of Appeals for the Seventh Circuit, Docket Number 13160.

64 2. Statement required by Rule 12(c) of the United States Court of Appeals for the Seventh Circuit.

3. Minute Order of June 30, 1960.

4. Contempt Order and Certificate entered June 30, 1960.

5. Motion of Lee A. Freeman to Arrest Judgment and Order of June 30, 1960, and to Vacate the Same and for Trial before an Impartial Judge, filed July 7, 1960.

6. Minute Order of July 7, 1960, entering Motion of Lee A. Freeman to Arrest Judgment and Continuing Same to September 15, 1960.

7. Order of September 15, 1960, denying Motion to Arrest Judgment.

8. Motion of Lee A. Freeman to Stay Execution of Sentences for Ten Days Pending Filing Notices of Appeal and to Fix Bond, filed September 16, 1960.

9. Minute Order of September 15, 1960, staying execution of sentences for ten days and fixing bond at $100.
10. Notice of Appeal filed by Lee A. Freeman on September 21, 1960.
11. Bond of Lee A. Freeman, filed September 21, 1960.
12. Transcript of proceedings before Judge Miner on July 7, 1960 and September 15, 1960.

65 13. Certified copy of docket entries commencing May 10, 1960.

14. This Stipulation.

Dated: October 21, 1960.

Lee A. Freeman
Lee A. Freeman, *pro se*
Brainerd Currie
Brainerd Currie
Attorney for Lee A. Freeman

Robert Tieken
Robert Tieken
United States Attorney

Lee A. Freeman
105 South LaSalle Street
Chicago, Illinois
An. 3-6939

Brainerd Currie
University of Chicago
Law School
Chicago, Illinois
Mi. 3-0800

66 United States of America,
Northern District of Illinois—ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby

certify that the above and foregoing are the original papers constituting the record on appeal in the contempt proceedings, in the cause entitled: Parmelee Transportation Company, Plaintiffs, vs. John L. Keeshin, et al., defendants, No. 56 C 323, In the Matter of Criminal Contempt of Thomas C. McConnell and Lee A. Freeman, as follows:

Two orders entered June 30, 1960 and
Contempt order and certificate entered June 30, 1960
Motion of Thomas C. McConnell, to arrest judgment and order of June 30, 1960, and to vacate the same and for a trial before an impartial judge, filed July 7, 1960.
Order entered July 7, 1960.
Motion of Lee A. Freeman to arrest judgment and order of June 30, 1960, and to vacate the same and for a trial before an impartial judge, filed July 7, 1960.
Order entered July 7, 1960.
Order entered July 7, 1960, re motions of Thomas C. McConnell and Lee A. Freeman.
Five orders entered September 15, 1960.
Notice of appeal of Thomas C. McConnell, filed September 21, 1960.
Clerk's certificate of mailing attached thereto.
Statement pursuant to Rule 12(d) filed October 5, 1960.

67 Notice of appeal of Lee A. Freeman, filed September 21, 1960.
Clerk's certificate of mailing attached thereto.
Statement pursuant to Rule 12(d) filed October 5, 1960.
Stipulation as to record on appeal, filed October 21, 1960, respectively of Thomas C. McConnell and Lee A. Freeman.

filed and entered among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October, 1960.

Roy H. Johnson
Clerk
By *Gizella Butcher*
Deputy Clerk

(SEAL)

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois

Wednesday, November 23, 1960

Before
Hon. Win G. Knoch, Circuit Judge

PARMELEE TRANSPORTATION Co., etc.,
Plaintiff-Appellant,
No. 13160 vs.
JOHN L. KEESHIN, et al.,
Defendants-Appellees;

PARMELLEE TRANSPORTATION COMPANY,
Plaintiff,
vs.
JOHN L. KEESHIN, et al.,
Defendants

No. 13175
In the Matter of Criminal Contempt of Thomas C. McConnell
No. 13176
In the Matter of Criminal Contempt of Lee A. Freeman

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration of the separate motions of Thomas C. McConnell, appellant in appeal No. 13175 and Lee A. Freeman, appellant in appeal No. 13176, and the separate answers of counsel for appellee, United States of America, to said motions,

It Is Hereby Ordered that the separate motions of the appellants be granted; and

It Is Ordered that the printed appendix to be filed by plaintiff-appellant in appeal No. 13160 stand and constitute part of the printed appendix to be filed by the appellants in appeals Nos. 13175 and 13176, and that the time for filing the printed brief and appendix of the appellants in appeals Nos. 13175 and 13176 be extended to and including January 3, 1961.

It Is Further Ordered that 50 copies of the printed appendix to be filed by plaintiff-appellant in appeal No. 13160 be filed instead of the 30 printed copies as provided in the Rules of this Court.

[fol. 58]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13175

September Term, 1960—April Session, 1961

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, Plaintiff,

v.

JOHN L. KEESHIN, et al., Defendants.

In the matter of criminal contempt of

THOMAS C. McCONNELL, Respondent-Appellant.

OPINION—July 6, 1961

Before Duffy, Schnackenberg and Castle, Circuit Judges.

Schnackenberg, Circuit Judge. Thomas C. McConnell, respondent, has appealed from an order of the district court entered by Judge Julius H. Miner thereof, on June 30, 1960, adjudging him guilty of criminal contempt and sentencing him to confinement for a period of ten days on each of three specifications described in said contempt order, said sentences to run concurrently. The alleged acts of contempt occurred in connection with the trial of the case of *Parmelee* v. *Keeshin, et al.*[1]

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[1] An appeal in this case was decided in this court, as case No. 13160, on June 30, 1961.

1. *Specification 5 reads as follows:*

> "On April 21, 1960, prior to the selection of a jury, although Thomas C. McConnell, by his own statement, [fol. 59] had read the transcript of the previous hearing in the cause at which the Court of its own motion suggested that consideration be given to separation of the issue of public injury for trial, and although no such suggestion or motion had been made by any attorney for any defendant at any hearing in the case, Mr. McConnell stated as follows:
>
> > "'This should be a forum where we could have that lawsuit tried without being hemmed in and penned in with a lot of artificial restrictions, dreamed up by counsel on the other side, whereby we are not given an opportunity to tell this jury what this lawsuit is about.'"

Respondent contends that he did not take the position that the court had no right to divide issues "under Rule 21," but that the issue the court proposed to segregate for trial was irrelevant. This position of respondent is supported by *Radiant Burners* v. *Peoples Gas Co.*, 364 U.S. 656, 660. In fact, Judge Miner, at the end of the case, seems to have conceded that McConnell was not arguing the power of the court to separate legitimate issues for trial, when the judge said:

> "• • • Plaintiff opposed the separation on legal grounds, arguing that it was unnecessary for plaintiff to prove public injury as such; • • • "

Nevertheless the court then said that he had read the briefs and the pleadings and that plaintiff made a specific allegation of public injury, which the defendants denied, and hence it was prerequisite that it be established.

We find it most difficult, if not impossible, to read into anything referred to in specification 5 any contumacious conduct by respondent. While no defense attorney had made a suggestion or motion for separation of the issue of public injury for trial, the court had indicated that

from reading the briefs and pleadings, the defendants had made a special denial of public injury and "that makes a prerequisite its establishment before we can go on with the others, the right to recover." In view of the correct contention of respondent that public injury was not a relevant issue, it is evident from the charge in specification 5 that respondent was referring to the arguments in the briefs and pleadings of defendants and that he had sub-[fol. 60] stantial basis for the language which he used, in view of the Supreme Court holding in *Radiant Burners, supra,* as well as *Radovich* v. *National Football League,* 352 U.S. 445, 453.

We hold that, on the record before this court, specification 5 does not validly charge respondent with contempt of court.

Specification 6 reads as follows:

> "On April 27, 1960, in the presence and hearing of the jury, after the Court had instructed the attorneys for plaintiff to refrain from repeatedly asking questions on subjects which the Court had ruled was not admissible, in the presence of the jury as distinguished from an offer of proof outside the presence of the jury, the following occurred:
>
> 'By Mr. McConnell: Now you are trying to tell us we can't ask these questions. We have a right to ask these questions, and until we are stopped from asking these questions we are going to ask them, because it is in our prerogative in doing it.
>
> 'By the Court: I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.
>
> 'By Mr. McConnell: We have a right to ask them.
>
> 'By the Court: You can offer proof on it.
>
> 'By Mr. McConnell: We have a right to ask questions which we offer on this issue, and Your Honor can sustain their objection to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us.'"

As indicated in our opinion in No. 13160, the case of *Parmelee* v. *Keeshin, et al.*, was on trial before court and jury when respondent proposed to make offers of proof outside the presence of the jury. Upon defendants' rejection of plaintiff's suggestion, the court ordered the trial to proceed. Respondent stated that the offers would involve proof of the conspiracy and monopoly issues, which [fol. 61] he was advised "will have to be made outside the presence of the jury". The court responded: "That is correct. That is my ruling."

Respondent explained that he was simply laying a basis in the record for an appeal and that he wished to have the record show the offers that he was making.

He attempted to follow the usual procedure, which consists of putting a question to a witness in the presence of the jury and, when an objection is made, an offer of proof is made out of the presence of the jury.[2] Finally the court admitted that this procedure followed by respondent was required by "the cases" as he "read them". However, later the court struck from the record several offers of proof bearing upon the charges of conspiracy and monopoly, for the reason that these charges had nothing to do with the question of public injury.

It is obvious that respondent, although with difficulty, was maintaining his client's position, despite the shift in the court's rulings as to the submission of offers of proof in a jury case. The method that respondent followed is in accord with the long-established practice in Anglo-Saxon courts and this incident emphasizes the great importance of trial court experience for lawyers generally. Ironically, respondent's adherence to what he had learned in this respect in the courts led to his being ordered to jail. Fundamentally there is no adequate substitute in the heat of a contested trial for prior trial experience. Of course in these days, when more money can be made by lawyers outside of courtrooms, the number of experienced trial lawyers is rapidly decreasing. So, to supply a synthetic experience in capsule form to take the place of trial experience, we have rules of court, such as 28 U.S.C.A. Rule 43 (c), *supra*,

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[2] This procedure is recognized by 28 U.S.C.A. Rule 43(c).

just as we have vitamin pills as a substitute for meals which always have taken considerable time in preparation as well as in eating. So, now, without trial experience, or the expenditure of time to learn why it is so, the modern lawyer may simply read the rules of civil procedure and practice according to the rule book. If there is any area of trial court practice which is not now covered by the rules, it is probable that a new rule will be promulgated in due time. [fol. 62] We have attempted to reproduce the essence of the turbulence under which respondent was required to act in protecting his client's rights. It is not the purpose of this opinion to decide whether he was correct in his statement of the substantial rights of his client. We are here concerned with the question of whether respondent as an attorney conducted himself properly in an attempt to represent his client. It was his right as well as his duty to firmly and respectfully advance plaintiff's claims and assert its rights. In so doing, he had as much right to be in the courtroom and to act as did the judge. He had a right, when the court ruled that he could not introduce evidence, to make offers of proof thereof, to the end that, in case of an appeal, a proper basis for a review might appear in the record. The presiding judge had a right to punish respondent for any contumacious violation of his duty as a member of the bar in this proceeding. Power to punish for contempt is one which must be used sparingly and only when it is clearly demonstrated that the respondent's conduct is contumacious and tends to bring the administration of justice into disrepute, rather than when his conduct is that of a determined level-headed practitioner who is acting respectfully to the court under considerable pressure in a lengthy and important trial.

18 U.S.C.A. § 401 provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> • • • • • • •

In *Ex parte Hudgings*, 249 U.S. 378, 383, the court said:

> "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted—
>
> • • • • • • •"

[fol. 63] This case was cited with approval in *In re Michael*, 326 U.S. 224, 228.

In the case at bar the order from which the appeal was taken contains no finding that respondent's conduct tended to obstruct or continued to obstruct the administration of justice, although we do not base our decision on this omission. Rather we think that its absence strongly indicated that the district court could find no support in the record for such a statement. Actually it appears that the specifications upon which the order was based were not made until several weeks after the trial in question had occurred.

As to specification 6, we hold that, with the exception of one statement attributed to respondent, nothing with which he is charged has been supported by proof of contumaciousness or disrespect.

The exception in specification 6, to which we have just referred, charges that respondent said:

> "• • • We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us."

The whole theory for holding respondent immune from his conduct in representing his client in good faith is satisfied when he is permitted to make a record in a respectful manner in the trial court for use in a court of review. The theory rests on the premise that he needs no further protection than an adequate record and that, if the court infringes his right to make such a record, his redress is in the court of review. His language which we now quote indicates that he did not rely alone upon this protection

but that he took the position that he intended to physically defy the court to the point that only a superior physical force called upon by the court could prevent him from proceeding. Even if he was right in his method of making a record and the court was wrong, this threat was inexcusable contumacious conduct. While events did not precipitate a physical clash, respondent made it clear when he uttered these words that he proposed to insist upon pursuing his course of action until stopped by a court bailiff. This proof is enough to support specification 6 and to that extent will require an affirmance of the order from which this appeal has been taken. We shall, however, [fol. 64] reduce the punishment thereunder to a fine of $100.

Specification 7 reads:

> "Repeatedly during the course of the trial Thomas C. McConnell conducted himself in a contumacious manner by employing a tone of voice and an attitude indicating contempt and defiance of the Court and disregarding admonitions of the Court with respect to his conduct before the jury."

This specification, without citation of any part of the record to support it, is too general to require an answer by respondent or a definitive ruling by this court. If the law were otherwise, we would be required to determine whether the order was justified without being directed to a single fact, word or deed alleged to have been spoken or performed by the accused. As one court said in regard to such a charge:

> " * * * The conclusions of the judge, unsupported by specific facts, in a direct contempt proceeding bear no weight whatsoever."

People v. *Hassakis*, 6 Ill. 2d 463, 129 N.E. 2d 9, 11. To the same effect are cases summarized in 154 A.L.R. 1227.

We find nothing cited in a brief filed by the United States attorney in support of the contempt orders which justifies specification 7. In fact, that brief seeks shelter in the argument that, inasmuch as concurrent sentences

were imposed on each of several specifications, the upholding of an order on any one is sufficient.

We hold that specification 7 does not constitute contempt as a matter of law since it recites mere conclusions and no facts on which the alleged contempt is based.

2. Respondent contends that fundamental fairness required that Judge Miner disqualify himself from acting in the contempt matter. This, he says, is because Judge Miner considered the alleged contempts as a personal attack upon himself, and, at the same time, he conceded that there was "no emergency about it."

Respondent relies particularly upon *Offutt* v. *United States*, 348 U.S. 11; *In re Murchison*, 349 U.S. 133; and *Farese* v. *United States*, 1 Cir., 209 F.2d 312, 315.

[fol. 65] It is a general rule that a direct contempt against the court is not sufficient to disqualify a court or a judge thereof. *Patterson* v. *Colorado*, 205 U.S. 454, 463.

In discussing rule 42 (a)[3] the court said in *Sacher* v. *United States*, 343 U.S. 1, 11:

> "A construction of the Rule is advocated which would deny a judge power summarily to punish a contempt that is personal to himself except, perhaps, at a moment when it is necessary to forestall abortion of the trial. His only recourse, it is said, is to become an accuser or complaining witness in a proceeding before another judge.
>
> "The Rule itself expresses no such limitation, and the contrary inference is almost inescapable. It is almost inevitable that any contempt of a court committed in the presence of the judge during a trial will be an offense against his dignity and authority. At a trial the court is so much the judge and the judge so much the court that the two terms are used interchangeably in countless opinions in this Court and generally in the literature of the law, and contempt of the one is contempt of the other. It cannot be that summary punishment is only for such minor contempts as leave the judge indifferent and may be evaded by

[3] 18 U.S.C.A. rule 42(a).

adding hectoring, abusive and defiant conduct toward the judge as an individual. Such an interpretation would nullify, in practice, the power it purports to grant."

In *Offutt* v. *United States*, *supra*, the court considered a proceeding growing out of a criminal trial where Offutt was defendant's trial counsel. From the opinion of the Supreme Court the following statement of facts appears, at 12:

* * * * * *

"* * * Almost from the outset, a clash between the presiding judge and petitioner became manifest, which, it is fair to say, colored the course of the trial throughout its 14 days, and with increasing personal overtones. The judge again and again admonished petitioner for what he deemed disregard of rulings and other behavior outside the allowable limits of aggres- [fol. 66] sive advocacy, and warned him of the consequences by way of punishment for contempt which such conduct invited. On the other hand, these interchanges between court and counsel were marked by expressions and revealed an attitude which hardly reflected the restraints of conventional judicial demeanor. Such characterization of necessity derives from an abiding impression left from a reading of the entire record.

"At the close of the trial, after the jury had retired for deliberation, the judge, acting under the procedure prescribed by Rule 42 (a) of the Federal Rules of Criminal Procedure and involving the authority of *Sacher* v. *United States*, 343 U.S. 1, found the petitioner guilty of criminal contempt on the basis of a certificate filed under the Rule, containing 12 findings of 'contumacious, and unethical conduct in open court during the trial,' and ordered him committed for 10 days to the custody of the United States Marshal for the District of Columbia.

"The Court of Appeals found that four of the 12 findings amply supported the commitment, but reduced the punishment from 10 days to 48 hours. It concluded that 'the record does not support the penalty imposed. Appellant's conduct cannot fairly be

considered apart from that of the trial judge. Each responded to great provocation from the other. * * *"

The court pointed out at 17:

"* * * The record discloses not a rare flare-up, not a show of evanescent irritation—a modicum of quick temper that must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with the petitioner. * * *"

In reversing, the court suggested that the judge who imposed the sentence should invite the assignment of another judge to sit in the second hearing on the charge against the petitioner.

In the present appeal, while what we have said herein has not been in entire approval of the conduct of the district court, we do not find that he was personally in- [fol. 67] volved in controversy with the respondent or that in his rulings leading to the orders appealed from he was actuated by personal enmity toward either of the lawyers held in contempt. Accordingly we do not feel that the *Offutt* case requires that upon the record before us there should be a remandment for retrial before another judge. Whatever may have been the reasons that caused the trial judge to commit the errors which we have recounted in cases Nos. 13160, 13175 and 13176, the records before us affirmatively rebut any personal enmity harbored by the judge against the two respondents before him.

We, therefore, hold that the district court did not err in failing to refer the questions of contempt to the executive committee for assignment for hearing by another judge.

3. In addition to the specifications aforesaid, the order now under attack contains some prefatory remarks which respondent characterizes as "a diatribe without any support in the record." He refers to this language:

"* * * Both attorneys for the plaintiff herein, embarked upon a course of unprofessional, unethical, in-

> timidating, insulting, defiant, unfair and improper behavior, to foist their will upon the Court and jury and to dominate the course of procedure herein without regard to an honest and impartial administration of justice."

Inasmuch as the court's order must stand or fall on the specifications, the language in the preface is unimportant, unless it supports respondent's contention that it showed the prejudice of the trial judge and that he was "incapable of giving him any kind of a fair hearing on the issue of contempt". We cannot give it such effect. Nor does the court's language in the preface indicate that the order of contempt or the punishment therefor was based upon the conduct described other than in the specifications. In this respect, we are impressed by the reasoning of the court in *MacInnis* v. *United States*, 9 Cir., 191 F.2d 157, 161, cert. denied, 342 U.S. 953:

> " • • • The court's remarks addressed to counsel after the verdict had been returned admirably show the poise of the judge and that the sentence was based upon the statements contained in the certificate in [fol. 68] their frame of circumstance. The court's reference to the general conduct of counsel throughout the trial does not indicate that either the judgment of contempt or the punishment therefor rests upon such conduct. The court found appellant's statements to be contemptuous and measured the punishment to fit the offense. The court's remarks constitute an explanation of the fact that counsel's conduct other than the contemptuous remarks was such that the contemptuous statements would not be condoned."

In accordance with the reasons which we have stated, the order from which this appeal has been taken is reversed as to respondent Thomas C. McConnell, except as to specification 6 therein only as to which it is affirmed and this cause is remanded to the district court with instructions to vacate the sentence imposed and in lieu thereof to impose a fine of $100 on said specification 6,

to be paid by respondent Thomas C. McConnell to the clerk of the district court, pursuant to law.

Order Reversed in Part and in Part Affirmed and Remanded With Instructions.

[fol. 69] DUFFY, Circuit Judge, dissenting in part.

I agree with the majority opinion that the convictions under Specifications 5 and 7 should be reversed. I also agree that Judge Miner did not err in failing to ask the Executive Committee to assign another judge to hear the charges of contempt.

I would also reverse as to Specification 6. The majority opinion describes the difficulties the plaintiff's counsel McConnell encountered in trying to preserve his client's rights. The attorneys for plaintiff were driven to a sense of frustration due to the District Court's rulings on offers of proof. Under such circumstances, it is understandable that an attorney might say things which should not have been said. I think that was the situation in the case at bar.

However, the majority opinion does not adequately present the setting in which the McConnell statement was made. He addressed the Court as follows: "We have a right to ask questions which we offer on this issue, and Your Honor can sustain their objection to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us." McConnell's statement occurred during the reading of the deposition of Howard E. Simpson, president of the Baltimore & Ohio Railroad. Simpson was a defendant. One of plaintiff's attorneys was reading portions of Simpson's adverse examination to lay the foundation for an offer of proof. The statement made by McConnell was followed almost immediately by a recess. When the court session was resumed, Mr. McConnell complied with the Court's ruling, and did not persist in asking the particular questions.

It might be noted that counsel's vigorous insistence on preserving his client's rights bore fruit, as the trial judge later changed his ruling. Counsel was then permitted to ask questions in the presence of the jury as a condition

precedent to the offers of proof made in accordance with Rule 43(c), Federal Rules of Civil Procedure.

Mr. McConnell has had much trial experience. Even under the stress of the exasperating conditions such as he [fol. 70] encountered, he should never have threatened to continue asking the questions in view of the Court's rulings, although he felt certain the rulings were incorrect. After the recess, when he had had time to cool down and consider the language used, he should have apologized to the Court.

Nevertheless, Mr. McConnell did comply with the Court's order. At that point there was no interference with the conduct of the trial. There was no obstruction in the administration of justice. In my view, the conviction for criminal contempt under Specification 6 should also be reversed.

[fol. 71]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before Hon. F. Ryan Duffy, Circuit Judge, Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Latham Castle, Circuit Judge.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, Plaintiff,

v.

JOHN L. KEESHIN, et al., Defendants.

No. 13175

In the Matter of Criminal Contempt of

THOMAS C. MCCONNELL, Respondent-Appellant.

JUDGMENT—July 6, 1961

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, Reversed as to respondent Thomas C. McConnell, except as to specification 6 therein only as to which it is Affirmed, and that this cause be and it is hereby, Remanded to the said District Court with instructions to vacate the sentence imposed and in lieu thereof to impose a fine of One Hundred Dollars ($100.00) on said specification 6, to be paid by respondent Thomas C. McConnell to the Clerk of the District Court, pursuant to law, in accordance with the opinion of this Court filed this day.

[fol. 72]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—October 5, 1961

It Is Ordered by the Court that the petition for rehearing filed herein by Thomas C. McConnell, appellant, be, and the same is hereby, Denied.

[fol. 73] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 74]

SUPREME COURT OF THE UNITED STATES

No. 498, October Term, 1961

In the Matter of Criminal Contempt of

THOMAS C. McCONNELL, Petitioner.

ORDER ALLOWING CERTIORARI—December 11, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

EXHIBIT VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

In the
United States Court of Appeals
For the Seventh Circuit

No. 13160

PARMELEE TRANSPORTATION COMPANY,

Plaintiff-Appellant,

vs.

JOHN L. KEESHIN, RAILROAD TRANSFER SERVICE, INC., HUGH W. CROSS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD E. SIMPSON, PAUL E. FEUCHT, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable
Julius H. Miner,
Judge Presiding.

EXHIBIT VOLUME I

Pages 1 - 212

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The Scheffer Press, Inc. — ANdover 3-6910

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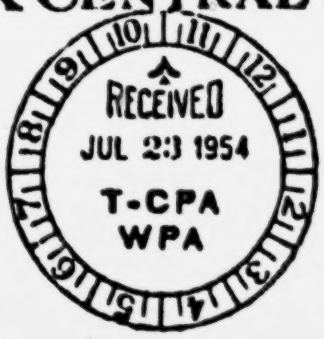
PLAINTIFF'S EXHIBIT 1

Ltr to Larry Dolp-Gray Line
8/2/54-HBS

NEW YORK CENTRAL SYSTEM

W. BONE
PASSENGER TRAFFIC MANAGER
F. DUNLEVY
ASST. TO PASSENGER TRAFFIC MANAGER



LA SALLE STREET STATION
CHICAGO 5, ILL.

July 22, 1954

Messrs:
R.T.Anderson, C.P.T.M., A.T.& S.F.R.R., Chicago
J.H.Cronnan, P.T.M., C.& N.W.Ry., Chicago
R.E.Coleman, P.T.M., D.& L.R.R., Chicago
E.M.Holt, G.P.A., Pennsylvania R.R., Chicago
O.H.Kimbel, P.T.M., I.C.R.R., Chicago

Gentlemen:

At a meeting of the Chicago Terminal Lines, Mr.Padrick appointed the undersigned Chairman and each of you to the committee to study the transfer situation in Chicago, and particularly to contact companies who, in your estimation, are large enough and capable of performing the transfer of passengers and baggage, to determine if there was any other company which could perform the service at a more economical rate than presently being performed by the Parmelee Transportation Company.

At a preliminary meeting of our committee it was indicated that Mr. Biddell contact the Parmelee people and the Gray Line, Mr. Holt - Willett, Mr. Anderson - Dixon, Mr. Coleman - Carroll, Mr. Cronnan - Lindell, Mr. Kimbel - Ayres and any other companies capable of doing the job.

I have reserved Room 830 at the Union League for Wednesday, September 15, and Thursday, September 16, to permit our committee to confer with the companies which you have contacted - I don't know that it will take two full days but it seems to me that if we set aside two days we will not, at this time, experience any difficulty in making a date with these people and we will have sufficient time to tell them the hour that they should meet with us.

I am attaching hereto a statement which you can give to the prospective transfer company, which statement outlines in a general way the size of the job to be done and will give them some idea prior to their meeting with us whether or not they want to undertake the job.

Yours very truly,

Passenger Traffic Manager

Enclosure
Copy Mr.E.B.Padrick

A669

PLAINTIFF'S EXHIBIT 1 (Continued)

STATEMENT #1

Chicago, July 21, 1954

TO ALL CONCERNED:

(The following information is prepared to give prospective companies who desire to bid upon the handling of transfer of passengers and baggage through Chicago an opportunity to know the size of the job which is contemplated) -

In Chicago there are eight passenger stations (six so-called steam train terminals and two electric train terminals), as itemized next:

Dearborn Station	Dearborn and Polk
Grand Central Terminal	Harrison and Wells
Union	Canal and Adams
Central	Michigan and Eleventh Place
LaSalle	LaSalle and Van Buren
Northwestern	Madison and Canal
Chicago-North Shore	Adams and Wabash
Chicago-South Shore	Randolph and Michigan

and the greatest distance between any two terminals is approximately 1-3/4 miles, otherwise the terminals listed are generally considered within the downtown area of Chicago although not exactly within the loop area.

The railroads serving Chicago have considered it to be to the advantage of their services, and a convenience to their passengers, that a transfer of persons and baggage be provided between the Chicago terminals - and this service has been performed by the Parmelee Transportation Company, which company only last year celebrated its 100th Anniversary.

We would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company, and they feel that the services of each has contributed to the success of the other, notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary, and because the greater portion of the transfer fee paid to the Parmelee Transportation Company is absorbed by the outbound railroad. It is, therefore, necessary to canvass the companies capable of handling such a transfer of passengers and baggage and whose reputation and vehicle equipment would indicate the ability to satisfactorily perform the services - and at a fee attractive to the rail carriers who, as stated above, absorb the charges accruing to the Chicago transfer.

(See Page 2)

A670

PLAINTIFF'S EXHIBIT 1 (Continued)

-2-

The specifications of such a transfer job are, briefly, as follows:

1 - Transfer approximately 1½ million passengers a year -

In 1951	1,648,577
1952	1,616,386
1953	1,429,847
Average	1,564,937

1,564,937, being the average number transferred in the three-year period, is 140,000 more than handled in 1953. According to our figures the most passengers are transferred in June, July and August.

Percentagewise, of the years total

9.1%	is	transferred	in	January
6.5%	"	"	"	February
7.2%	"	"	"	March
7.2%	"	"	"	April
7.5%	"	"	"	May
10.1%	"	"	"	June
10.1%	"	"	"	July
10.5%	"	"	"	August
8.5%	"	"	"	September
7.3%	"	"	"	October
6.5%	"	"	"	November
9.5%	"	"	"	December

2 - The transfer of passengers is required between trains arriving and departing Chicago - trains arrive Chicago beginning at 5:00 A.M. and either arrive or depart Chicago beyond midnight.

3 - Hand luggage carried with passengers should be transferred in the same cab. Therefore the number of seats utilized in a cab depends upon the amount of luggage that can be placed in the baggage compartment of the cab; excepting briefcases, etc., all luggage is placed in luggage compartments of the cabs - none is placed in the seats.

4 - About 90,000 pieces of checked baggage, ranging in size from a small overnight case to a salesman's trunk, are transferred between the eight stations each month, or more than one million pieces per year. This part of the service is better performed in trucks which deliver and receive their loads at the special platforms provided for such a purpose in each terminal.

(See Page 3)

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PLAINTIFF'S EXHIBIT 1 (Continued)

5 - Transfer of corpse is an important consideration, and, although the number of cases is unpredictable, it is not uncommon to handle as many as eighteen to twenty remains in one day between the different terminals.

The committee trusts that the items listed above will give you an idea of the job that is to be performed and, if you desire, the committee will meet with you and answer additional questions to give you sufficient information to permit you to give a price for which you will perform the service of transferring passengers and luggage between stations in Chicago.

RECAPITULATION:

1 - Transfer approximately 4,000 passengers per day.

2 - Workday begins with early trains.

3 - Cabs with space for hand luggage.

4 - Transfer approximately 3,000 pieces of baggage per day.

5 - Transfer of corpse.

The foregoing is intended to be illustrative but not necessarily conclusive.

PLAINTIFF'S EXHIBIT 2

Kennan & 2-id
56C 323

FILED

AUG 15 1960

CHICAGO, May 23, 1955

File: 164 -(S-3)

Plaintiffs Exhibit 2 Defendants Exhibit ( ) Idea. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
DEPOSE MINER, J.
Ray E. Fuller - Official Court Reporter

PARMELEE TRANSFER CHARGES

Mr. R. O. Small,
Vice President - Traffic.

Referring to our several conversations and correspondence relative to the above subject and returning herewith memorandum covering Mr. Feucht's conversation with Commissioner Hugh Cross:

Passenger Traffic Representatives of the New York Central, Pennsylvania, Illinois Central, Baltimore & Ohio, Santa Fe and Chicago & North Western Railway, as well as Mr. E. B. Padrick, Chairman of the Western Passenger Association, who comprise the committee, met with Mr. J. L. Keeshin during the morning of May 19th and with Mr. Morris Markin during the afternoon of the same date for the purpose of reviewing their respective proposals.

Basically, Mr. Keeshin's proposal originally submitted in writing on December 15, 1954, clarified in writing on April 6th and further elaborated upon verbally on May 19th, is as follows:

Contract Term: Five years.

Coupon Rates and Escalator Clauses: A three-year labor wage contract for truck drivers was settled early this year which provides a wage increase of 10¢ an hour for the first year, 8¢ an hour for the second year and an additional 8¢ an hour for the third year. Subsequent to this settlement, Mr. Keeshin said he would guarantee a rate of $1.20 per coupon for the first year, $1.22 per coupon for the second year and $1.23 per coupon for the third year. Increase in coupon rate during fourth and fifth years would be determined solely on increased wage awards. A decline in passenger traffic would not have any effect on the coupon rate, nor would additional fringe benefits (hospitalization, welfare, etc.), if granted, have any effect. For each 5¢ increase in direct wage cost the coupon rate would be increased 1¢. The same formula would apply in reverse should wages decrease, i.e., coupon rate would be decreased 1¢ for every 5¢ an hour decrease in wages. In connection with the wage situation, Mr. Keeshin stated he did not believe wages would increase much higher than they are at present but should inflationary trends continue after the third year and thus create a cause for demanding additional compensation, he thought the hourly wage increase would not exceed 10¢ an hour in the fourth year and 10¢ an hour in the fifth year. This in effect would mean that the coupon rate during the fourth year could be $1.25 and during the fifth year $1.27. However, Mr. Keeshin did not state positively and would not guarantee what the ceiling rate would be during the fourth and fifth years.

PLAINTIFF'S EXHIBIT 2 (Continued)

Baggage Transfer: Baggage would be handled between stations in 20 ft. trailers on a two hour basis which in effect would mean four pick ups and four deliveries daily, two in the morning and two in the afternoon. Baggage from incoming trains would be handled to or near the tail gate of the trailers by baggage room personnel, loaded by Keeshin drivers and thence moved to a central consolidating station for sorting and ultimate delivery to respective stations. Mr. Keeshin is convinced that the use of trailers for baggage transfer is definitely better than a so-called straight 12' or 14' body truck. He also stressed that union labor regulations do not restrict the driver from loading and/or unloading trailers. With respect to manifesting and receipt of baggage, Mr. Keeshin stated verbally the same procedure as presently in effect would apply.

Passenger Transfer: Mr. Keeshin proposes to use eight-passenger station wagons (Ford) with automatic shift, air conditioning and equipped with mobile radio units for facilitating the dispatch of equipment between stations. Approximately 60 units would be acquired for passenger service.

Mr. Keeshin estimates the amount of capital required to furnish all facilities and equipment would approximate $500,000. In addition, he intimated a working fund of about $200,000 would be necessary to start this operation. Any questions concerning his credit and financial responsibility can be answered by Mr. James U. Snydacker, Vice President of the First National Bank of Chicago. Approximately ninety days will be necessary to acquire sufficient equipment to commence operation and equipment would be replaced every thirty months. The company would be operated separately and independently and would not be integrated with any other organization in which Mr. Keeshin is interested. Books would be available for examination or inspection by the railroads as they will be audited by a reputable certified public accounting firm.

Mr. Markin's proposal submitted in writing on March 15, 1955 and elaborated upon and amended verbally on May 19th is basically as follows:

Contract Term: Expiration December 1961 - actually 6½ years from and after July 1, 1955.

Coupon Rates and Escalator Clauses: Originally Mr. Markin proposed a sliding scale for adjustment of coupon rates upward or downward after the first year depending on the amount of traffic handled. 1954 would have been the base year for rate adjustment purposes. However, on May 19th Mr. Markin verbally agreed to drop this particular clause from his proposal. Parmelee drivers belong to an independent union and negotiations covering wages are now in progress. Despite the outcome, Mr. Markin stated he would guarantee a rate of $1.20 per coupon for the first year. Commencing with July 1, 1956, an increase of 1 cent in the coupon rate would be made for each increase of three cents per hour in drivers wages. The same formula

PLAINTIFF'S EXHIBIT 2 (Continued)

would apply in reverse should drivers' wages decrease, i.e., the coupon rate would be reduced 1 cent for every 3 cents an hour reduction in drivers' wages. Mr. Markin has, however, put a ceiling on the coupon rate which guarantees that the rate, regardless of wage increases, will not exceed $1.25 at any time during the term of the contract, i.e., December 1961.

Baggage Transfer: Baggage would be handled as at present (twice daily - morning and afternoon) on straight body trucks. Mr. Markin does not believe a trailer operation would be feasible, stating that facilities at depots are not adequate to accommodate trailers without considerable congestion. He further stated that any savings which might be effected by trailer operation would be offset by additional cost of loading and unloading by railroad baggage employees as tractor drivers are not permitted by the Union to help load or unload. Sorting and manifesting of baggage would be done by railroad employees. (This might require an additional railroad baggage employee.) Presently, manifests are made by the Parmelee driver.

Passenger Transfer: Parmelee proposes to use present type seven-passenger and twelve-passenger limousines for transfer of passengers and will commence replacing the present limousine equipment with new limousines as soon as possible.

Mr. Markin estimates that the purchase of new and larger equipment for transporting both passengers and baggage will require the expenditure of approximately $500,000 over a period of from six months to a year and he can only make this expenditure if he has a commitment from the railroads that will allow him to amortize it to December 31, 1961. This committee, the same as other committees in the past, requested an opportunity to inspect the Parmelee Company's books but again their request was turned down by Mr. Markin.

On Friday, May 20, Mr. Markin of the Parmelee Transportation Company phoned the committee that after reviewing the proposal which they presented on Thursday which we have mentioned above, that they desired to amend their proposal as follows:

"The base rate shall be established at $1.20. There shall be an increase of 1¢ for each 3¢ increase in the cost of labor. The maximum rates under this formula are as follows:

For the year commencing July 1, 1955 - - $1.20
For the year commencing July 1, 1956 - - 1.22
For the year commencing July 1, 1957 - - 1.23
For the year commencing July 1, 1958 - - 1.24
For the year commencing July 1, 1959 - - 1.25
For the year commencing July 1, 1960 - - 1.25

PLAINTIFF'S EXHIBIT 2 (Continued)

- 4 -

"To date, Parmelee has served the railroads for 102 years with no written contract, only the railroads' verbal commitment. We are still ready to honor the verbal commitment of the railroads for the next five years as per our understanding, without a written contract unless the railroads desire to have such a contract."

While Mr. Willett in the beginning of the negotiations made a proposal, it was not as comprehensive and complete and in the opinion of the committee, it seemed that a thorough investigation had not been made as to what the necessities and requirements were in connection with the transfer of passengers and baggage between stations. Consequently, it was the consensus of the committee that Mr. Willett could not be considered as a sincere bidder.

While there are a number of other details concerning operating procedure in both Keeshin's and Parmelee's proposals, the differences are relatively insignificant and would represent but a very small proportion of the total price paid for transfer service by the railway companies.

In considering these two proposals the committee will no doubt have to bear in mind the possibilities of what they will be paying each fiscal year up to and including December 31, 1961.

Parmelee's amended proposal would provide the same coupon rate as Keeshin for the first three years, however, Parmelee's proposal for the fourth year will have a maximum rate of $1.24 whereas effective July 1, 1958 under Mr. Keeshin's proposal, if he did have to increase his drivers' hourly rate 10 cents per hour the coupon rate could be $1.25.

In the fifth year, if Mr. Keeshin is again forced to increase his drivers' wages 10 cents per hour, the coupon rate could be increased another 2 cents or $1.27 whereas under Parmelee's proposal it would be $1.25 from July 1, 1959 until December 31, 1961.

Mr. Keeshin's five year contract would expire on June 30, 1960 and as to what his proposal might be for the period July 1, 1960 until December 31, 1961 and thereafter, it is, of course, problematical whereas under the Parmelee agreement we know that the maximum charge per coupon would be $1.25.

While no doubt the entry of the Keeshin and Willett Transportation Companies has had a very weighty effect in negotiating transfer arrangements between stations in Chicago, we feel that we must take into consideration that the Parmelee Transportation Company has been handling the transfer of passengers and baggage between stations in Chicago for over 100 years,

PLAINTIFF'S EXHIBIT 2 (Continued)

their organization should be well qualified from their experience and background and considering that their rate per coupon could possibly be less than Keeshin's proposal, also the fact that the railroads have been quoted a ceiling for the cost per coupon until December 31, 1961 regardless of wage awards, it is our views and recommendation that we be permitted to cast a vote in favor of the Parmelee proposal.

J. R. BRENNAN

cc: Mr. T. L. Norton

PLAINTIFF'S EXHIBIT 3

FIL

Brennan 4 3 id

JGC 3v3

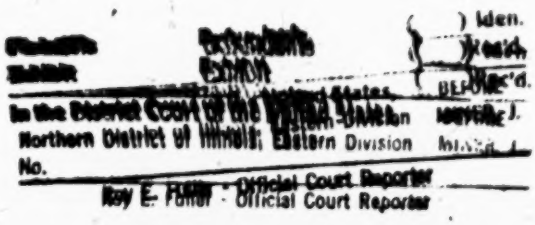
AUG 1

Plaintiff's Exhibit | Defendant's Exhibit | Iden. | Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter



Memorandum of my conversation with Hugo Cross, Commissioner, Interstate Commerce Commission, at 4:15 p.m. Friday, May 13, 1955

Hugh Cross stated that he was very much interested in seeing that J. L. Keeshin got the new contract with the railroads here in Chicago to handle baggage and people between the various stations. He understands the contract expires July 1st and there are three bids for the new contract--Willett, Parmelee and Keeshin.

The bid Keeshin has proposed is $1.20, which is 2¢ lower than what we are now paying. In other words, we are paying $1.22. For every 5¢ an hour wage increase they will only increase 1¢ an hour but they will not go higher in three years than 3¢ even though the wage increase might be higher than 3¢ an hour. Parmelee came down and met the $1.20 but there are some jokers in their proposal in that their contract states that for every 1% decrease in receipts there will be a 1¢ raise in tickets, which clause is not in Keeshin's bid.

In addition, Keeshin offers eight passenger station wagons, heated in the wintertime and air conditioned in the summer, they would put any suggested name on them the railroads decide upon, they would handle baggage every hour on the hour between the various stations, and they would have representation here in Chicago as against the absentee representation by Parmelee.

He also stated that Keeshin's proposal was backed up by the First National Bank and they would get new equipment every three or five years (I am not positive but I believe he said every three years).

P. E. F.

May 13, 1955

PLAINTIFF'S EXHIBIT 4

WESTERN UNION

TELEGRAM

W. P. MARSHALL

C & NW RY

•PA667 WM00

W BGA022 NL PD=BG BETHESDA MD 25=

:HON P E FEUCHT= 1955 MAY 25 PM 4 53

CHICAGO AND NORTHWESTERN SYSTEM 400 WEST

MADISON CHGO=

EXPECT TO BE IN CHICAGO BETWEEN MAY 31 AND JUNE 2 AT WHICH TIME I SHALL CALL STOP HOPE I MAY HAVE A SHORT CHAT WITH YOU=

HUGH W CROSS=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

N.W-F161

PLAINTIFF'S EXHIBIT 5

CHICAGO, May 27, 1955

A-

Mr. P. E. Feucht
President.

With reference to contract for transferring passengers and baggage between railroad stations in Chicago, the present contract with Parmelee Transfer Company expiring June 30, 1955:

The Passenger Traffic officers committee which has been negotiating consists of the following railroads, with Mr. Padrick, Chairman of the Western Passenger Association included:

New York Central
Pennsylvania
Illinois Central
Santa Fe
Baltimore & Ohio
C. & N. W.

The attached statement is a brief outline of the present arrangement with Parmelee and the arrangements proposed by Parmelee and by Keeshin. The Willett Company has indicated that they are no longer interested.

It is the view of our passenger people, and I understand the same view is held by the committee members from the other railroads, that Parmelee should be awarded the contract because of their years of experience, their financial integrity and the fact that they have given us a definite maximum of $1.25 per coupon after the fourth year of the contract.

R. O. Small ✓

Plaintiff's Exhibit 5 Defendant's Exhibit ( ) Identified ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
BEFORE WINER J
Roy E. Fahn, Official Court Reporter

	PARMELEE PRESENTLY	PARMELEE PROPOSED CONTRACT	KEESHIN PROPOSED CONTRACT
Contract Term	No contract	6 1/2 years to expire December 31, 1961	5 years to expire June 30, 1960
Coupon Rate			
Rate	$1.22	Base rate $1.20. For each 3¢ per hour increase in wages, coupon will be increased 1¢. Similar reduction in rate if wages decrease, but not less than $1.20.	1st year - $1.20 2nd year - $1.22 3rd year - $1.23 4th and 5th year - $1.23 plus 1¢ for each 5¢ per hour wage increase or less 1¢ for each 5¢ per hour wage cut.
Wage contract status		Negotiations in progress.	3 year contract settled early this year.
Maximum Rate		1st year - $1.20 2nd year - $1.22 3rd year - $1.23 4th year - $1.24 Thereafter $1.25	1st year - $1.20 2nd year - $1.22 3rd year - $1.23 4th year - No maximum 5th year - No maximum
Baggage Transfer			
Frequency	Twice daily - morning and afternoon	Twice daily - morning and afternoon, as at present	Four times daily - every two hours
Type of trucks	Straight Body	Straight Body (Is of the opinion that facilities at Depots inadequate for trailer use and will cause congestion.)	20 Foot Trailers (Baggage to be sorted at a consolidated station and distributed from there).
Preparing Manifests	Driver now prepares	Railroad employes to prepare. (This may require the hiring of one additional railroad employee).	Driver to prepare
Loading and unloading trucks.	Driver	Driver	Driver (Parmelee claims union rules prohibit Keeshin drivers from doing so.)

	PARMELEE PRESENTLY	PARMELEE PROPOSED CONTRACT	KEESHIN PROPOSED CONTRACT
Passenger Transfer Type of Equipment	7 and 12 passenger Limousines	7 and 12 passenger Limousines	60 - 8 passenger Ford stationwagons with automatic shift, air-conditioning and mobile radio units to facilitate dispatching.
Acquisition of new Equipment		Present equipment to be replaced within six months to one year. Present 12-Passenger Limousines placed in service latter part of 1952 and early 1953	90 days required to acquire equipment needed.
Frequency of replacement of vehicles - baggage and passenger		New equipment to be acquired and amortized to end of contract term.	Vehicles to be replaced with new vehicles every 30 months.
Examination of books by railroad	Railroad not permitted to examine.	Will not permit.	Books will be audited by reputable C.P.A. firm each year and open for railroad inspection. Accounts to be kept separate from other Keeshin operations.

PLAINTIFF'S EXHIBIT 5 (Continued)

N.Y.-F 15

PLAINTIFF'S EXHIBIT 6

Subject: Parmelee Transfer at Chicago.

Chicago, January 7th, 1955

D Y-3

Mr. J. . Duffy:

Referring to our memorandum of April 27, 1954, file Y-3, advising of agreement made with Parmelee Transportation Company through June 30, 1955, and our later memorandum of October 7, 1954 advising that the coupon rate from July 1, 1954 through June 30, 1955 would be $1.22, children's coupon rate 61¢, and furlough coupon rate 85¢,

A committee consisting of the line in each terminal paying largest amount to Parmelee was appointed to contact other transfer companies in Chicago capable of performing the operation to ascertain if a lower price could be secured for transferring passengers and baggage between Station in Chicago. A memorandum was prepared outlining the transfer problem and presented to each of the companies contacted and an interview was arranged with the companies interested to answer their questions and progress the matter. We have received a bid from Mr. J. L. Keeshin for transfer of passengers and baggage at charge of $1.20 per coupon, with an escalator clause, and the bid also includes proposal that station forces load and unload trailers which would be hauled between stations by tractors -- loading and unloading with our own men would be additional expense for the carriers. A bid was received from the Landon Co. for the transfer of checked baggage only. The Railway Express Agency advised that they would only be interested in the handling of baggage, and this they would do on a 15% plus cost basis.

The committee is still waiting for a proposal from the Gillette Company, and from Mr. Sid Engelhart of New York. When these last two proposals are received they will be presented along with the others to the Chicago Terminal Lines, however, the committee working on the problem did not feel that a change should be made in contractor unless there is a substantial reduction in price.

The Parmelee Co. has been advised of request made on other contractors for bids made for transfer service, and it has been suggested to them that they come up with a better proposition for the transfer service after July 1, 1955.

. . Anderson

JL:pjr

PLAINTIFF'S EXHIBIT 7

• MEMORANDUM •

Chicago, February 15, 1955

D Y-3

SUBJECT: Transfer Arrangements - Chicago

Mr. R. T. Anderson:

At meeting of Chicago Terminal Lines February 1st, report of committee studying transfer arrangements at Chicago was submitted. Chicago Terminal Lines were advised that we had received one bid for transfer of passengers and baggage from Kenshin at approximately same rate Parmelee is now charging, and one bid for transfer of baggage only. Chairman Padrick advised lines present that it was the view of the committee studying the transfer arrangements that a change in operators should not be considered unless, say, bid of $1.10 or $1.00 including baggage was submitted by some transfer company.

Up to this time, the Willett Motor Coach Co. had indicated interest in submitting a bid, but had delayed submission in order to study the matter carefully. Mr. Willett is a personal friend of Mr. Feucht of the C&NW. On Feb. 3rd, the Willett Motor Coach Co. wrote to Mr. Bone submitting bid of $1.10 to transfer passengers and their baggage. Very few details were incorporated in their bid other than statement that they would furnish 6 and 10 passenger vehicles in their service, no information was given as to how they propose to handle baggage transfer, etc. Mr. Bone has called a meeting of the committee studying the transfer arrangements for Wed. February 23rd. [redacted] He called me yesterday about Willett's submission stating that he thought that it was inspired by some terminal line as a result of the statement made by Chairman Padrick. I had the same impression that someone had advised the Willett Co. [redacted] amount to bid.

Mr. Bone thinks that we should go very slow on any change in operators. We have had no word from Parmelee about any increase or decrease in charge for coupon although they have been advised by Mr. Padrick of the study being made and told that we believe they should come up with some changes that will reduce the transfer cost.

J. L. S.

JLS:kek

PLAINTIFF'S EXHIBIT 8

Chicago, March 18, 1955

D Y-3

SUBJECT: Parmelee Transfer at Chicago

Mr. G. E. Duffy:

Supplementing our memo Jan. 7th, reporting on progress of committee of Chicago Terminal Lines studying transfer of passengers and baggage in Chicago.

That memo reported bid from Mr. Keeshin for transfer of passengers and baggage at $1.20 per adult coupon with an escalator clause based on drivers wages, and also including proposal that baggage be handled between stations by trailers which would involve rail station forces loading and unloading trailers. On March 4th, Willett Motor Coach Co. submitted bid on basis of charges now in effect with Parmelee, or $1.22 for adult, 61¢ for half fare children, and 85¢ military furloughs; Willett bid also proposed use of trailers for transfer of checked baggage.

Mr. Martin of the Parmelee Co. was advised about the request for bids from other contractors, and it was suggested to the Parmelee Co. that they come up with a better proposition for the transfer service after July 1, 1955. At a meeting of the committee yesterday he submitted the following proposal based on contract with Chicago Terminal Lines from July 1, 1955 to December 31, 1961, long term agreement with drivers and acquisition of new equipment for passenger transfer and baggage service to be amortized over five year period:

(1) Effective July 1, 1955, reduce adult coupon rate from $1.22 to $1.20.

(2) Effective with July 1, 1956, coupon rate to be increased or decreased 1¢ for each 3¢ per hour increase or decrease in drivers wages.

PLAINTIFF'S EXHIBIT 8 (Continued)

Mr. [illegible] - 2 -

(3) Effective July 1, 1956, increase coupon rate 1¢ for each 1% decrease in number of coupons honored or decrease coupon rate 1¢ for each 1% increase in number of coupons honored. This computation to be based on the coupons honored during the period July 1, 1954 through June 30, 1955, with each adult coupon being counted as one unit, half fares at 1/2 unit, and furloughs at 1/10 of a unit. No adjustment to be made during the period July 1, 1956 through June 30, 1956, account changes in cost of labor or reduction in coupons.

Proposals involving use of trailers are unsatisfactory because none of the terminals can handle them and, in addition, loading and unloading by the carriers would increase our cost considerably.

Our present letter agreement with Parmelee is effective until June 3 , 1955, and while we have previously operated without a contract, it is felt that Mr. Markin is entitled to a contract because of the expense to be incurred in acquiring forty new 12-passenger vehicles and twenty-five new 5-passenger vehicles to replace the 5,7 and 10 passenger vehicles now being used; the other bidders also requested a contract for at least a five year period.

Twelve operators in Chicago considered to be of sufficient size and financially able to perform the transfer service were contacted and only two firm bids were received both on approximately same charge per coupon as Parmelee, but both objectionable because of the additional expense for us in connection with loading and unloading of the trailers for handling checked baggage.

The NYC thought that we would be faced with a request for an increase in the coupon rate from any new contractor if the transfers decrease very much, and they did not see too much objection to failure to include in the proposal a ceiling on the coupon rate, which Parmelee proposes to increase or decrease as outlined in Items 2 and 3 above. Assuming one million transfers during the base period and a 20% decrease in traffic in one of the later contract years, the coupon rate would increase from $1.20 to $1.40 and the total

PLAINTIFF'S EXHIBIT 8 (Continued)

payment to Harmelee would be 93.3% of the amount paid during the base period; foregoing assumes no change account wage rates.

Entire matter will be considered at a meeting of all Chicago Terminal Lines sometime within the next thirty days for response to Mr. Markin.

R. T. Anderson

JJF:kek

PLAINTIFF'S EXHIBIT 9

In the District Court of the United States, Northern District of Illinois, Eastern Division

• MEMORANDUM •

Chicago, May 23, 1955

D Y-3

SUBJECT: Parmelee Transfer at Chicago

Mr. G. E. Duffy:

Supplementing our memorandum of March 18th, and previous advices about progress of committee of Chicago Terminal Lines studying transfer of passengers and baggage in Chicago.

The committee met Thursday morning with Mr. J. L. Keeshin, and Thursday afternoon with Mr. M. Markin, to review their proposals. We understand that Mr. Keeshin has appealed to the executives of the B&O, Penna., C&NW, and possibly other lines for favorable consideration of his bid. Mr. Keeshin passed a statement around at the meeting showing the amount of freight revenue billed through the truck rail terminal in Chicago which he operates - Penna. received the largest revenue over $1,000,000, other carriers in Eastern territory and carriers operating between Chicago and St. Paul received large amounts - Santa Fe received approximately $3,000 revenue.

Mr. Keeshin proposes to furnish air conditioned, radio-phone controlled 8-passenger station wagons supplemented with some larger equipment for the transfer of passengers, and 20-foot trailers on a two hour dispatch for the transfer of baggage. Coupon rate for the transfer of passengers and baggage will be $1.20 for the first year, $1.22 for the second year, $1.23 for the third year, the coupon rate for the fourth and fifth years to be increased 1¢ for each 3¢ of wage increase. If Mr. Keeshin is the successful bidder, the drivers would come under a different union and would have to pass a physical examination - Mr. Keeshin is positive there will be no union difficulties.

We have operated with Parmelee without a contract, but it is felt that in view of expense to be incurred in acquiring new equipment, the operation should be covered by contract after expiration of present letter agreement June 30, 1955. Mr. Markin now submits a proposal of $1.20 for transfer of passengers and baggage

PLAINTIFF'S EXHIBIT 9 (Continued)

Mr. C. E. Duffy -- 2.

effective July 1, 1955, with an increase of 1¢ in the coupon rate for each 3¢ of wage increase, with a maximum of a 5¢ increase over the five year contract and a maximum coupon rate in each year as follows: July 1, 1956, $1.22; July 1, 1957, $1.23; July 1, 1958, $1.24; and July 1, 1959 through June 30, 1960, $1.25.

Mr. Markin states that he will spend $500,000 in the next 18 or 24 months if he is successful bidder to replace trucks with a new type of vehicle and to add thirty new 12-passenger limousines to his present fleet of 20 which will enable the retirement of the older 7-passenger limousines. The other Parmelee services will be continued unchanged, baggage transfers being handled on a two-a-day basis which has been satisfactory.

There will be a final meeting of the committee on June 3rd to submit a recommendation to all Chicago Terminal Lines. We propose to recommend the continuance of our arrangement with Parmelee because of our long association with that company and its satisfactory transfer of our passengers and baggage between terminals. We believe that the proposal submitted by Mr. Markin is superior to the proposal submitted by Mr. Reeshin because we have assurance of a maximum coupon rate in the fourth and fifth years, and in addition, we will avoid the possibility of labor trouble in connection with operation by a new company with different union.

R. T. Anderson

JLS:kek

PLAINTIFF'S EXHIBIT 10

Plaintiffs Exhibit 10 Defendants Exhibit (✓) Iden. (✓) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division No. BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

FILED

AUG 1[illegible]

Chicago, June 6, 1955

C-5 D Y-3

AT[illegible]: Transfer Between Stations at Chicago

Mr. G. [illegible]. Duffy:

Referring to our memorandum of May 23rd, and verbal instructions given Mr. Sloan.

The committee of Chicago Terminal Lines, studying transfer of passengers and baggage between stations in Chicago, met Thursday, June 2nd, and inspected the equipment which Mr. [illegible] Keeshin proposes to use if he is given the contract. Mr. Keeshin showed the committee: Ford 5-passenger station wagon; Mercury 7-passenger station wagon; a small bus type vehicle with space for eight passengers manufactured in West Germany called the "Volkswagen"; a 23-passenger bus, and trailer and tractor equipment.

The committee met again Friday, June 3rd, and voted unanimously to make a five year contract with Mr. Keeshin. On request of the committee, Mr. Keeshin appeared and answered to the satisfaction of the committee the following questions:

1. Continuity of service.
   Mr. Keeshin was asked if he had any intention of disposing of the organization before the end of the five year contract. He stated that it was his intention to retain the organization for himself and that by trust agreement set up at First National Bank, this proposed organization and his other organizations will be continued intact for ten years after his death, at which time, if desired by his family the ownership can be transferred to others with employes given first opportunity to purchase.

2. Maximum coupon rate in fourth and fifth years.
   Mr. Keeshin's contract with his union organisation has three years to run, and the coupon rate of $1.20 first year, $1.22 second year, and $1.23 third year has been quoted on the basis of the three year contract. His original proposal provided for an increase in the coupon rate in the

PLAINTIFF'S EXHIBIT 10 (Continued)

Mr. C. E. Duffy -- 2.

fourth and fifth years of 1¢ per each 5¢ wage increase. He was willing to include maximum of 2¢ increase in each of the fourth and fifth years, but recommended against it because the drivers would surely learn about it and demand the maximum increase in their wages. In place of guaranteed coupon rate he agreed to negotiate with the carriers on the fourth and fifth year coupon rates before agreeing to any increase in wages and will open his books and furnish financial statements annually.

A letter was sent to the Chicago Terminal Lines, Friday, calling a meeting for June 13th, and including a recommendation from the committee that a five year contract be entered into with the Keeshin organization. As the lines on the committee pay over 68% of the total transfer bill, we are confident that the committee recommendation will be approved. The members of the committee stand ready to file individual notice that they will make a contract with Mr. Keeshin.

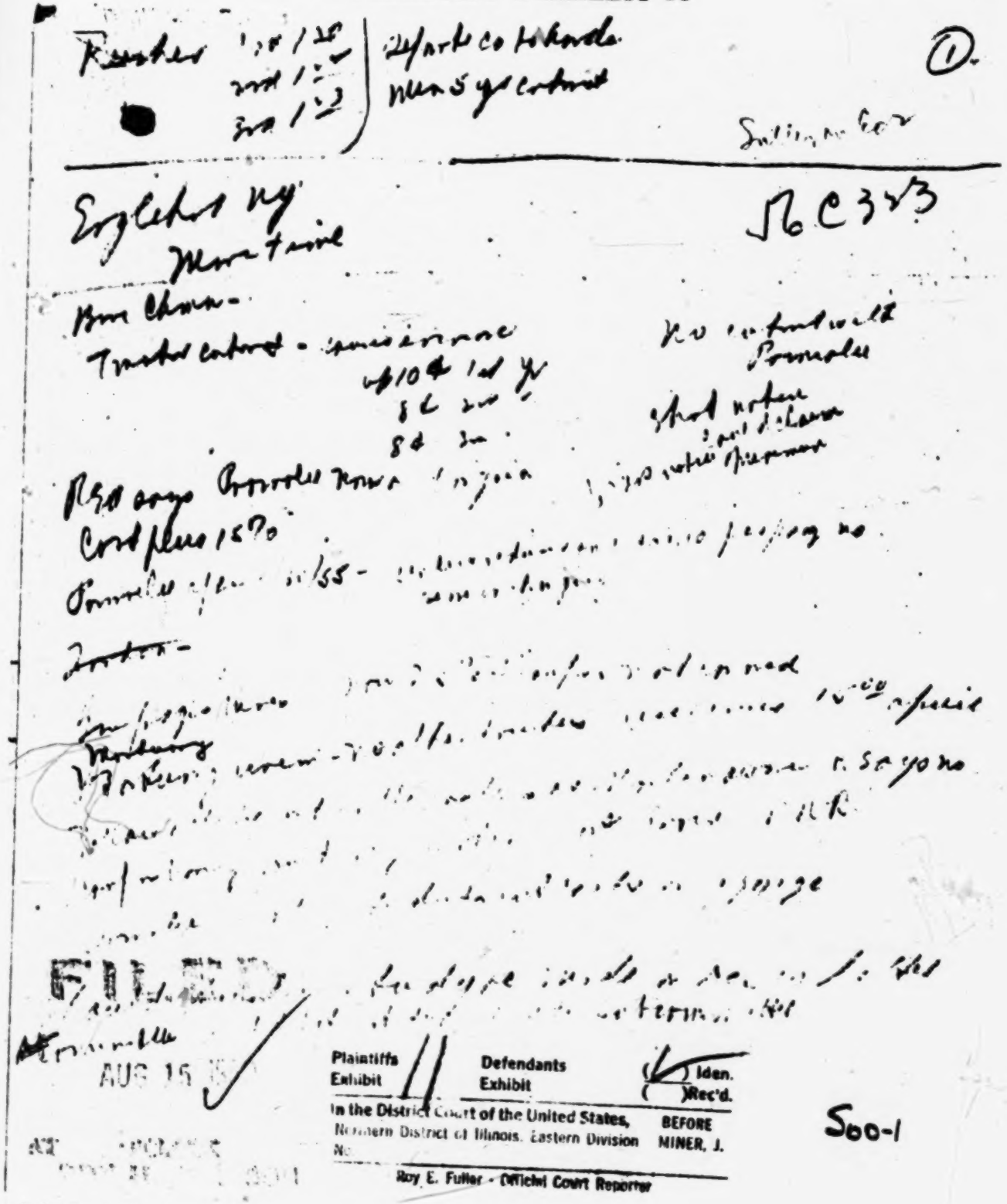
Mr. Keeshin requests 90 days to prepare to take over the transfer service, but to insure against emergency should Carmelee discontinue operation July 1st, he has placed an order with Litsinger Motors in Chicago, and confirmed it with the Ford Motor Company, for fifty 5-passenger station wagons, ten 7-passenger station wagons, and two station wagons to handle remains, also truck equipment to handle checked baggage.

R. T. Anderson

JLS:kek

(2)

PLAINTIFF'S EXHIBIT 11



Plaintiffs Exhibit 11 — Defendants Exhibit — (✓) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER, J.

No.

Roy E. Fuller - Official Court Reporter

PLAINTIFF'S EXHIBIT 12

Minneapolis, Minn.,
February 3,1955

Meeting of Chicago Terminal Lines, Tuesday, February 1st

Chairman gave a resume of the work of the committee endeavoring to secure some alternative proposal to the present Parmelee transfer set-up.

The only proposal received covered baggage transfer only and it in most cases would be as expensive as the present Parmelee deal covering baggage and passengers. The Railway Express Agency made the statement that we were getting a good deal at present and that they would not touch the proposition for anything less than cost plus 15 percent.

The consensus of the meeting seemed to be there would be no point in disturbing the present relationship unless we could reduce the price to around $1.00 or $1.10.

The Chairman pointed out that because of a strong Union situation among the drivers of mortuary cars in Chicago, Parmelee was the only outfit who could handle remains between depots. If we secured the services of some other firm it would be necessary that remains be handled between depots in hearses at $15.00 per trip minimum.

The Chairman had conferred with Mr. Markham of Parmelee, who also owns the Yellow Cab and Checker Cab Co. in Chicago, regarding the possibility of having these Cab Companies honor coupons. Mr. Markham refused to do so because he was afraid honoring coupons would make the Cab Company subject to the Interstate Commerce Act and his cab drivers eligible for Railroad Retirement. Another alternative on passengers would be to furnish cash for coupons in a manner similar to that done during the Parmelee strike. It was estimated by the Chairman that 25% of the Parmelee coupons issued for transfer thru Chicago were not honored by Parmelee. It was felt that if cash was given passengers 100% of the coupons would be redeemed and no saving would result.

P.H. Sullivan

B-L

12

56 C 373

500-2

PLAINTIFF'S EXHIBIT 13

February 13, 1956
Minneapolis, Minnesota

Mr. R. F. Berndt:

Yours February 6, file M-416.

We have investigated the operations of the Railway Transfer Service and have been advised as follows: "It does not follow schedule, does not make the required number of pick ups and deliveries and on some occasions baggage lays over at B&O station over night, also, not adhering to contract."

Mgr., Mail, Baggage, Milk & Express Traffic

WLF/yw

PLAINTIFF'S EXHIBIT 14

AUG 15 19[illegible]

AT ___ O'CLOCK
ROY E. FULLER

STATE OF MARYLAND } ss
CITY OF BALTIMORE }

Plaintiff's Exhibit 14 Defendant's Exhibit — Identified / Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

R e323

Howard E. Simpson, being duly sworn, says: I am President of the Baltimore and Ohio Railroad Company. During the spring of 1955 Mr. Hugh Cross, a member of the Interstate Commerce Commission, in the course of a conversation with me, asked if I was familiar with negotiations of the railroads in Chicago with respect to the transfer of passengers and baggage between railroad stations in that city. I told him that our passenger traffic officers had informed me sometime previously that the then existing contract with the Parmelee Company for this transfer service would expire during 1955, and that the passenger officers of all the Chicago railroads were then considering what arrangements should be made for continuing the service thereafter, but that I did not know any of the details. In response to his further inquiry if I would find out the status of the matter and let him know, I later ascertained from our passenger officers that the Chicago lines had requested competitive bids for the transfer service after the Parmelee contract expired, and I relayed this information to him by telephone, for which he thanked me. To the best of my recollection, Mr. Cross inquired about developments in the matter a couple of times later on in conversations with him on other things.

At no time in any conversation did Mr. Cross endeavor in any way to influence me with respect to the transfer arrangements that should be made in Chicago or that the Chicago lines were considering, and I had no knowledge of him having any arrangement to join Keeshin or any other company.

Howard E. Simpson

Sworn to and subscribed before me this 11th day of November 1955.

Fred N. Hen[illegible]

PLAINTIFF'S EXHIBIT 15

56C3x3

Plaintiff's Exhibit 15 Defendants Exhibit
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller - Official Court Reporter
Iden. Rec'd.
BEFORE MINER, J.

AFFIDAVIT

AT

STATE OF MARYLAND)
) ss
CITY OF BALTIMORE)

Howard E. Simpson, being duly sworn, says:

1. I am president of the Baltimore & Ohio Railroad. My office is in Baltimore, Maryland.

2. This affidavit is made to supplement an affidavit I executed on the 11th day of November, 1955 relating to some conversations had with Mr. Hugh Cross regarding the arrangements for the transfer of passengers and baggage between railroad stations in Chicago, Illinois.

3. My first conversation with Mr. Hugh Cross on this subject took place in my office in Baltimore, Maryland, following his prior telephone request for the appointment.

4. Other subjects were mentioned in my office on the date of that appointment but as no one of them was emphasized more than the others I attached no particular significance to any of them, and it was not apparent to me from our conversation what Mr. Cross' reason may have been for seeking the appointment.

5. The other conversations mentioned in my previous affidavit took place subsequent to this original conversation in Baltimore.

Howard E. Simpson

Sworn to and subscribed before me this 21 day of December 1955.

Notary Public

PLAINTIFF'S EXHIBIT 16

Baltimore, Md., April 11, 1955

SUBJECT: Parmelee Transfer at Chicago

FILE

Mr. H. E. Simpson:

Your inquiry of Mr. Whittington concerning the status of the Parmelee transfer of passengers and baggage at Chicago.

In 1942 the 75¢ charge of Parmelee for transfer of passengers and baggage at Chicago was increased to 85¢, and after the war the charge was successively increased to $1.00, $1.12, $1.20 and on January 1 this year to $1.22. In fact, each time Parmelee commenced wage negotiations with their employees they have also begun negotiations with the railroads for an increase in the charge. Another factor has been the decline in volume of traffic in recent years and the inability of Parmelee to make commensurate reductions in their expenses.

The general question of the cost of transferring passengers and baggage between stations at Chicago has been under almost constant survey by the Committee of Terminal Lines in an effort to see what could be done to reduce the cost to the railroads. These surveys have included not only detailed studies of the Parmelee service for both passengers and checked baggage, but also formal inquiry has been directed to all other companies in the Chicago area which could possibly perform either the passenger or the baggage transfer service, asking that they submit bids. The Gray Line, Chicago Transit Company, Willett Coach Lines, Hertz and others have examined the passenger transfer, but have been unable to come up with any proposal that would be attractive to the railroads.

In addition, the Railway Express Agency, the contract P&D freight carriers and others have studied the baggage transfer, but none have submitted proposals which the railroads could consider. The only way the REA would handle the baggage would be on a cost plus basis.

The rail lines are transferring between stations at Chicago approximately 1½ million passengers annually. Checked baggage transferred totals about 90,000 pieces. The competitive nature of better than 90% of the traffic moving through Chicago has resulted in the railroads absorbing the transfer charge except in very few instances on nearby points of origin or destination. For our railroad our Parmelee bills are currently averaging about . . . . . $5,000 a month, and this is slightly lower than in previous years, because of the gradual decline in traffic.

During the past year considerable study has been given to the possibility of generally adding the transfer into the through fare paid by the passenger, but because of the competitive situation a majority of the

B+O 63

PLAINTIFF'S EXHIBIT 16 (Continued)

-3-

lines refuse to do this. Another proposal was to exempt the more important competitive territory and add the charge elsewhere. In checking this we found that if we exempted points on the New York-Washington line, plus Pittsburgh, Akron and Youngstown, where we have competition, better than 90% of our traffic was from and to such points and the situation would be little different from that which now exists.

Another suggestion was to add a 50¢ "terminal charge" to all fares via Chicago to help offset the Parmelee bills. The thought here was that this charge would be added in on through rates regardless of whether there was actually a Parmelee transfer, but it was considered doubtful this could be gotten by the Commission, or if a terminal charge could be justified at Chicago the question of such charge at St. Louis and other points would immediately become involved.

Our present understanding with Parmelee expires June 30, 1955. We do not now have a formal contract, but the understanding between Parmelee and the railroads are covered by correspondence only. However, Parmelee has now asked for a formal contract for five years with the charge to the railroads tied to increases in wages of Parmelee and decreases in volume of the traffic as indicated by the following items suggested by Parmelee for consideration by the railroads:

1. That the railroads, by written agreement, will continue with our services until December, 1961.

2. That commencing with July 1, 1956, an adjustment of the coupon of one cent (1¢) for each increase or decrease of three cents (3¢) per hour in wages of the driver employees and that such adjustments shall continue yearly thereafter until the expiration of this contract.

3. That commencing with July 1, 1956, and yearly thereafter on July 1, the price of the coupon will be increased one cent (1¢) for each one per cent (1%) decrease in the number of coupons received by Parmelee during the base period, and the price of the coupon will be decreased one cent (1¢) for each one percent (1%) increase in the number of coupons received by Parmelee during the base period.

4. That the basis for such computation should be established by the number of coupons received during the calendar year of 1954. In computing the total number of coupons the full fares shall be computed as one, the half fares computed as one-half and the furloughees shall be computed eighty-five one hundred twentieths.

5. That the baggage at all depots which is to be transferred by Parmelee shall be sorted and manifested by the railroads in triplicate.

PLAINTIFF'S EXHIBIT 16 (Continued)

-3-

6. That Parmelee will assume any increases in cost of labor between July 1, 1955 and June 30, 1956.

7. That Parmelee will assume any loss of revenue through the reduction in the number of coupons received between July 1, 1955 and June 30, 1956.

8. That the present coupon rate will be reduced from $1.22 to $1.20 as of July 1, 1955.

9. That the charges for all other services will remain the same.

The above proposal by Parmelee has not been formally submitted to the Chicago Terminal Lines, but has been discussed with the Chicago Sub-committee handling the transfer survey. The Sub-committee, on which we are represented, has not made its report to the Terminal Lines.

Parmelee now takes the position that much of its equipment is old and needs replacing with new and larger vehicles for transferring both passengers and baggage, and that only with such new and more modern equipment is there any possibility of reducing the cost and providing the type of service the railroads insist on. They say they will be required to spend about . . . . . $500,000 over a period of from six months to a year and can only justify this expenditure if they have a five year contract with the railroads.

Many of the rail lines will be reluctant to sign a long term contract in view of the various studies which are still being made of this situation, and the divergent views of the lines as to what should be done. This will, of course, be considered after a full report of the Sub-committee has been received. Our company, however, is in a position where, with no major Western Lines in Grand Central Station, practically all of our traffic has to transfer to and from other terminals. Our principal competitor, the PRR, is more fortunate in that the CB&Q, C.StP&P and the North Pacific Coast service of GN&P operates from Union Station without transfer being necessary.

One suggestion made from time to time is that we discontinue all passenger transfer and let the passengers use regular taxicabs at their own expense, but arrange for separate transfer of checked baggage. The difficulty with this is that many of the transfers are for close connections, and during inclement weather taxicab service just would not be available, while today Parmelee assumes responsibility for this service and generally does a good job.

Considering our company's competitive situation, we generally feel

PLAINTIFF'S EXHIBIT 16 (Continued)

-4-

A definite transfer arrangement of the type now effective is desirable, but we are currently awaiting the full report of the Sub-committee, after which the entire situation will be considered by all the Terminal Lines.

J. W. Phipps, Jr.

PLAINTIFF'S EXHIBIT 17

FRIDAY 19 8 55 APRIL

[illegible] Day

Good Friday

[illegible] Days to come

~~10.15 I.C.C. Commissioner Cross [illegible]~~

~~10.30 PM BALTO. NATIONAL [illegible]~~ Postponed to Apr. 15-

Plaintiffs Exhibit	Defendants Exhibit	( ) Idem. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

FILED

AUG [illegible]

AT [illegible]

[illegible]

56 C 373

SIMPSON DIARY

PLAINTIFF'S EXHIBIT 17 (Continued)

THURSDAY 19 21 55 APRIL

111th Day — 254 Days to come

New York

10.00 - Mr. Wm Morris, Alco.

12.45 - [illegible] CONFERENCE

N.Y. Railroad Clubs - I.C.C. Night
6.00 - 7.00 - Reception - South Room - Commodore Hotel
7.00 - Dinner - Century Room
8.15 - Meeting

PLAINTIFF'S EXHIBIT 17 (Continued)

SATURDAY 19 23 55 APRIL

113th Day

252 Days to come

Baltimore

10.00 AM [illegible]

PLAINTIFF'S EXHIBIT 17 (Continued)

FRIDAY 19 29 55 APRIL

119th Day

246 Days to come

~~8.00 Lower Washington - Sen Bridges~~

7.30 - Breakfast on Pres. Tuohy's car - C & O. Washn Term.

9.45 - R.F. & P.

10.15 - A.A.R.

Tr. 8 Washn to Balto

PLAINTIFF'S EXHIBIT 17 (Continued)

WEDNESDAY 19 4 55 MAY

194th Day

241 Days to come

~~[illegible] Jersey City~~
New York

9.30 - B. & O. Ex. Com.

11.30 - CERT Mtg - Sapphire Room, Pierre Hotel - N.Y.C.

~~B. & O. EX. COM. - N.Y.~~

See Pres. Perlman after above meeting.

Tr. 523 - Jersey City to Yetto

PLAINTIFF'S EXHIBIT 17 (Continued)

THURSDAY 19 19 55 MAY

139th Day — Ascension Day — 226 Days to come

New York

9.45 - R.F.&P. Bd.

12.45 - EASTERN RAILROAD CONFERENCE

Tr. 3 - Jersey City to Balto

PLAINTIFF'S EXHIBIT 18

THURSDAY 19 21 55 APRIL

111th Day — 254 Days to come

New York

10.00 - Mr. Wm. Morris, Alco. 56 C 823

Plaintiff's Exhibit — Defendant's Exhibit — Identified / Rec'd

In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE MINER, J.
No.

Roy E. Fuller - Official Court Reporter

12 45 - EASTERN PRES. CONFERENCE - Rm. 119, Biltmore

AUG 1

N.Y. Railroad Club - I.C.C. Night
6.00 - 7.00 - Reception - South Room - Commodore Hotel
7.00 - Dinner - Century Room
8.15 - Meeting

DIARY OF SCHNELL, SIMPSON'S SECRETARY.

PLAINTIFF'S EXHIBIT 18 (Continued)

FRIDAY 19 8 55 APRIL

98th Day

Good Friday

967 Days to come

Baltimore

10.15 I.C.C. Commissioner Cross
(Hall B-7460 Ext. 717)

~~[illegible]~~ MTG (Postponed to Apr. 15)

18 Sage

Defendants

Exhib.

Ident.

Rec'd.

In the District Court of the United States

Court of District of Illinois Eastern Division

No.

WITTIER

MINER, L.

Roy E. Fuller - Official Court Reporter

PLAINTIFF'S EXHIBIT 18 (Continued)

SATURDAY 19 23 55 APRIL

1186 Day

331 Days to come

Baltimore

10.00 - Commissioner Cross, I.C.C.

PLAINTIFF'S EXHIBIT 18 (Continued)

FRIDAY 19 29 55 APRIL

119th Day

246 Days to come

Washington

7.30 - Breakfast on Pres. Tuohy's car - C&O.
- R.F. & P. Board

~~A.A.R.~~

9.45 - R.F. & P. Board (AAR old Board Room)

10.15 - A.A.R.

Tr. 2 Washn to Balto

PLAINTIFF'S EXHIBIT 18 (Continued)

WEDNESDAY 19 4 55 MAY

124th Day

241 Days to come

~~Tr. 12 Balto to Jersey City~~
New York

9.30 - B. & O. Ex. Com.

11.30 - Sapphire Room, Pierre Hotel - C.E.R.T. -
(To terminate at 2.30 or 3.00 p.m.)

~~B. & O. EX. COM. - N.Y.~~ (Wed. 18th)

See Pres. Perlman, N.Y.C., following above meeting.

Tr. 523 - Jersey City to Balto.

PLAINTIFF'S EXHIBIT 18 (Continued)

FRIDAY 19 27 55 MAY

[illegible] Day

[illegible] Days to come

Washington

7.30 - Breakfast - Car 100 -

10.15 - A. A. R.

Cal [illegible]
[illegible]
Tarrie
[illegible]
[illegible]
[illegible]
Tindley
San George

~~2.00 FRUIT GROWERS EXP. CO. - Ex. Com.~~
(Unable attend)

Tr. 50 A - Washn to Balto

To White Sulphur Springs

PLAINTIFF'S EXHIBIT 18 (Continued)

WEDNESDAY 19 7 55 SEPTEMBER

Baltimore
Call Hugh Cross

~~B. & O. Ex. con. Nat.~~

12.30- Pres. Edmund L. Grimes, Commercial Credit Co., in for luncheon
2.00- Bd. - Sav. Bank of Balto

PLAINTIFF'S EXHIBIT 18 (Continued)

THURSDAY 19 8 55 SEPTEMBER

Tr. 21 - Balto to Washn
~~Baltimore~~
Washington

11.00. Chairman Cross, I.C.C.
Also called on Commissioners ~~...~~son
and Tuggle

Tr. 50A - Washn to Balto

PLAINTIFF'S EXHIBIT 19

AFFIDAVIT

COUNTY OF COOK,
State of Illinois, ss:

I, Fred G. Gurley, do swear and depose as follows:

1. I am president and chairman of the executive committee of the Atchison, Topeka & Santa Fe Railroad Co. My office is in Chicago, Ill.

2. I have known Mr. Hugh W. Cross for 15 years, or since he became Lieutenant Governor of Illinois in 1940. During this time I have had a friendly but casual acquaintanship with him. We have never had a serious business discussion, and I probably have not engaged in casual conversation with him more than a half dozen times in the whole period. I have never had any business dealings with him, although of course, the Atchison, Topeka & Santa Fe Railway system is subject to regulation by the Interstate Commerce Commission, of which Mr. Cross has been a member for the past 6 years.

3. Mr. Cross has not talked with me about the transfer of the passenger and baggage transportation contract between railroad stations in Chicago from the Markin or Parmelee interests to the Keeshin interests, and he has not written or otherwise communicated with me on the subject.

4. Since the question was raised a few weeks ago by a Senate investigator, I have made inquiries among those members of the official staff of the Atchison, Topeka & Santa Fe Railway system who would be likely to know about the matter, and I have received reports that the same is true of them--they have had no communication, written or otherwise, with Mr. Cross regarding the transfer of the contract.

(Signed) Fred G. Gurley.

Subscribed and sworn to before me this November 8, 1955.

(SEAL)

(Signed) Wilbur L. Camp,
Notary Public, Cook County, Ill.

My commission expires September 15, 1956.

Curley Exh. 1

PLAINTIFF'S EXHIBIT 20

AFFIDAVIT

COUNTY OF COOK,
State of Illinois, ss:

I, Fred G. Gurley, do swear and depose as follows:

1. I am president and chairman of the executive committee of the Atchison, Topeka & Santa Fe Railway Co. My office is in Chicago, Ill.

2. This affidavit is made to supplement an affidavit which I executed on November 8, 1955, regarding the so-called Markin-Keeshin controversy.

3. Prior to the award of the station transfer contract in Chicago to Mr. Keeshin about June 15, 1955, I had heard rumors that Mr. Hugh W. Cross, a member of the Interstate Commerce Commission, was unhappy in Washington and contemplating resigning and returning to his native State of Illinois. Some time subsequently to this in the spring of 1955 I heard rumors and statements to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing the transfer contract. I have had no conversation or communication of any kind with either Mr. Cross or Mr. Keeshin regarding the truth of these reports.

(Signed) Fred G. Gurley.

Subscribed and sworn to before me this November 10, 1955.

(SEAL)

(Signed) Wilbur L. Camp,
Notary Public, Cook County
Ill.

My commission expires September 15, 1956.

Plaintiffs Exhibit 20 Defendants Exhibit ( ) Issued ( ) Rec'd

In the District Court of the United States, Northern District of Illinois, Eastern Division No. BEFORE MINER, J.

Ray B. Fuller - Official Court Reporter

Gurley Exh. 2

56 C 323

PLAINTIFF'S EXHIBIT 21

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

1201

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

HB

.SE029 WM22 (55)...

W SNA026 GOVT PD=SN WASHINGTON DC 10 ~~1053~~AME=

FRED GURLEY, PRESIDENT (REPORT DELIVERY)=

ATCHISON TOPEKA & SANTA FE RAILROAD= 1955 NOV 0 AM 10 10

80 EAST JACKSON BLVD CHGO=

YOUR AFFIDAVIT INCOMPLETE AND THEREFORE INADEQUATE AS SUBSTITUTE FOR PERSONAL APPEARANCE. YOUR PRESENCE REQUIRED TUESDAY, NOVEMBER FIFTEEN, IN ACCORDANCE WITH SUBPOENA PREVIOUSLY SERVED=

ROBERT F KENNEDY CHIEF COUNSEL SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS=

SF-2

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

PLAINTIFF'S EXHIBIT 22

3239

UNITED STATES OF AMERICA

Congress of the United States

To Mr. Fred Gurley

President, Acheson, Topeka & Santa Fe Railroad, 80 E. Jackson Boulevard, Chicago, Illinois, Greeting:

Pursuant *to lawful authority, YOU ARE HEREBY COMMANDED to appear before the* SENATE ~~Committee on~~ PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS *of the Senate of the United States, on* Tuesday, November 15, *1955, at* 9:30 *o'clock A. m., at their committee room* 101, Senate Office Building, Washington, D. C., *then and there to testify what you may know relative to the subject matters under consideration by said committee.*

Hereof fail not, *as you will answer your default under the pains and penalties in such cases made and provided.*

To .....

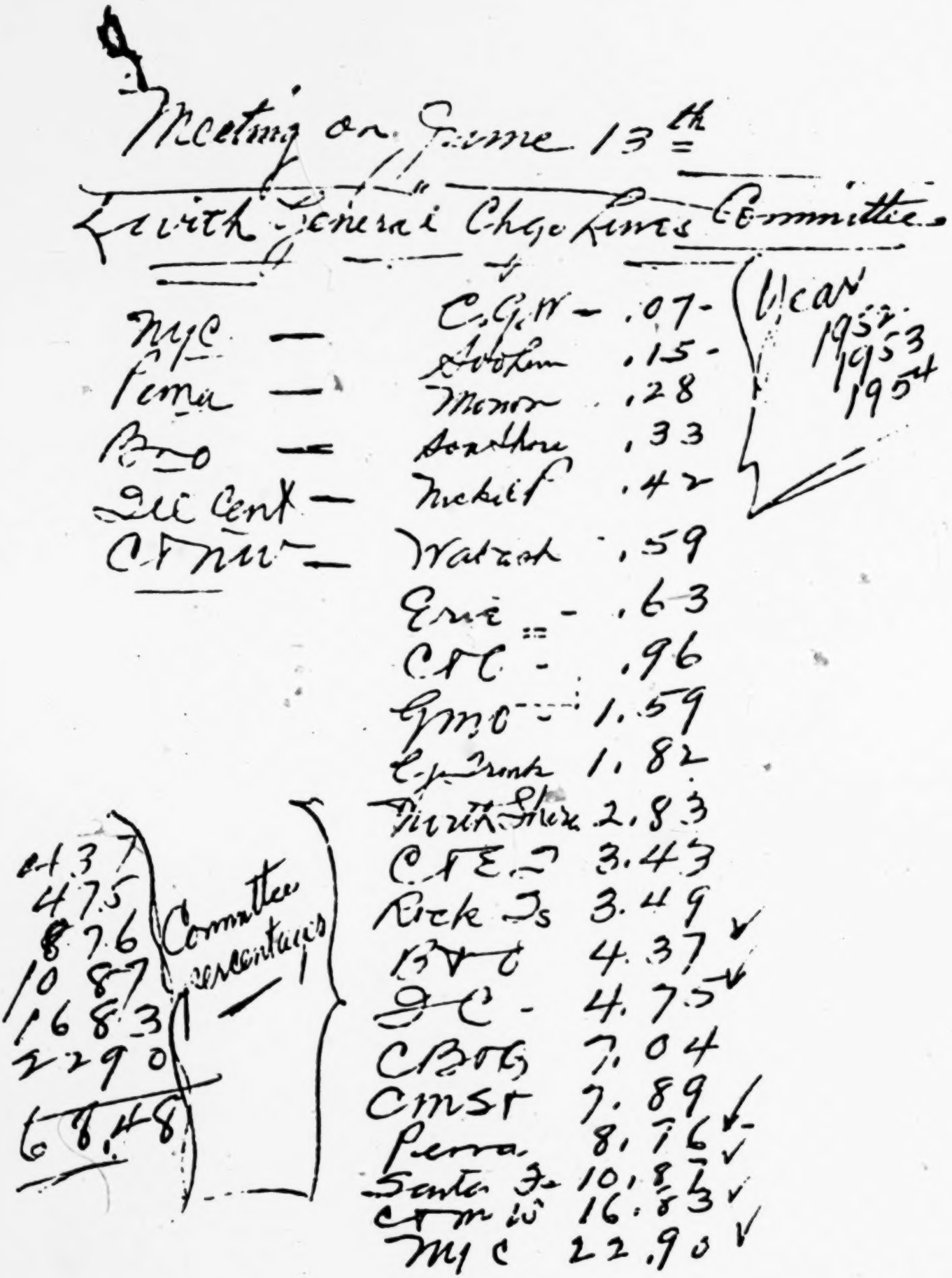
to serve and return.

Given *under my hand, by order of the committee, this* 4th *day of* November, *in the year of our Lord one thousand nine hundred and* fifty-five

John L. McClellan

Sub-Chairman, Committee on Investigations of the Committee on Government Operations

PLAINTIFF'S EXHIBIT 23



PLAINTIFF'S EXHIBIT 24

Form 200 Rated.

THE BALTIMORE AND OHIO RAILROAD COMPANY

Plaintiffs Exhibit 24 Defendants Exhibit Mem. Rec'd

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.

No. 16 C 3 #3

Roy E. Fuller, Official Court Reporter

Meeting FILED 190

Nelson #5

AUG 15 1960

AT O'CLOCK

ROY H. JOHNSON

Willett suggested Railroad form separate and [illegible] Permanent tie-up. Then suggested forming our separate company — not acceptable.

J. L. Keeslin proposed not sufficient [illegible] from present cost to warrant change from Pennsylvania Co. Railroad worse off if must load and unload trailers.

Arlt (PRR) — mentioned thinking of some management [illegible] entirely [illegible]

DFO 106

PLAINTIFF'S EXHIBIT 24 (Continued)

Form 300 Relsd.

THE BALTIMORE AND OHIO RAILROAD COMPANY

(2) _____ 19__

Passengers a [illegible] amount of money for their Taxi Transfer. Pairs [illegible] to arrange for movement of checked baggage only.

B00
107

PLAINTIFF'S EXHIBIT 25

MEMORANDUM

Chicago, Illinois
May 20, 1955

MEETING IN CHICAGO THURSDAY, MAY 19, 1955 OF SUB-COMMITTEE, CHICAGO TERMINAL LINES WITH KEESHIN AND PARMELEE TRANSPORTATION COMPANY ACCOUNT TRANSFER AT CHICAGO, ILLINOIS

Regular Sub-Committee of Chicago Terminal Lines, augmented by the presence of Mr. J. F. Whittington, General Passenger Traffic Manager and Mr. R. E. Coleman, Passenger Traffic Manager, Baltimore and Ohio Railroad; Mr. E. R. Comer, Passenger Traffic Manager, Pennsylvania Railroad; and Mr. J. R. Brennan, Passenger Traffic Manager, Chicago & Northwestern Railway, met with Mr. J. L. Keeshin and associates and Mr. Morris Markin and associates of the Parmelee Transportation Company to discuss the proposals submitted by them for the transfer of passengers and baggage and checked baggage between stations at Chicago and other special services allied thereto.

As showing below results of discussion of the proposals already submitted, together with other services which were not clearly outlined therein and would necessarily be included in a final understandings

J. L. KEESHIN

Mr. Keeshin referred to his original proposal of December 15, 1954 and his letter of April 6, 1955 confirming and clarifying some of the items contained in his previous letter. The charges for the two principal services, that is, transfer of passengers together with hand baggage by motor vehicle and the transfer of checked baggage by truck had been properly covered in his original proposal. However, there were other special charges which were discussed and which would have to be further confirmed by him. These latter charges are indicated by an asterisk (*) mark.

EQUIPMENT

Passenger

8, - Type

It is intended to purchase, to start operation, about fifty 8-passenger station wagons equipped with two-way radio control, power steering, power brakes and air-conditioning. Baggage will be stored on top of vehicle in rack properly

PLAINTIFF'S EXHIBIT 25 (Continued)

-2-

protected from the elements by a draw tarpaulin. In addition he intends to purchase ten 22 or 32 seat passenger buses.

b. - Schedule

A regular schedule will be set up to provide sufficient vehicles to meet all incoming trains. To take care of flow of business from stations, where it is sufficiently heavy, to other stations, buses will be utilized as well as for movements of special parties traveling together.

Baggage

a. - Type

He intends to purchase or utilize from presently owned equipment about forty 20 ft. trailers.
There is still some question as to whether or not our baggage room employees will load or unload the spotted trailers without cabs. This is permissible insofar as our company is concerned (letter of Mr. J. F. Whittington December 4, symbol 8, 1954). Or, his station agent and driver will perform this service.

b. - Schedule

He intends to perform a pick-up and delivery service on an every two hour basis from 8:00 AM to 5:00 PM, utilizing a central control point to which all baggage would be moved and sorted for ultimate delivery to respective stations.
The number of trailers that could be spotted at each baggage room would vary as to the number of doors available - Grand Central Station has space for only two trailers at a time.

CHARGES FOR SERVICES

Passenger

a. - Regular Transfer Services

First year - July 1955-56 - $1.20 per piece — Children - half fare; Purloaghees - 85¢

Second year - July 1956 - 57 - $1.22 per piece

PLAINTIFF'S EXHIBIT 25 (Continued)

a. - Regular Transfer Services (cont'd)

Third year - July 1957-58 - $1.23 per piece

Fourth and fifth years - an increase of one cent per coupon for each five cent increase in direct wage cost.

Discussion with Mr. Keeshin developed his opinion that direct wage increase for each of these years would not be more than ten cents a year or two cents a year increase in the coupon rate. This would make the coupon rate for July 1958 to 1959 - $1.25 and July 1959 to 1960 - $1.27.

b. - Special Service

* For groups traveling on special reduced rates, he agreed to a 45 cent per capita charge; parties to be moved in buses or if found more suitable to use the smaller vehicles, he would do so.

Baggage

a. Regular Service

This would cover regular checked baggage and the charge of course, is included in the per coupon rate.

b.-Special Services

Remains

The rate would be $7.50 including two coupons. The carriers now recover $5.10 of the $7.50 by making charge against passenger so that actually we are paying only the two coupon rate which includes transfer by vehicle of one passenger.

* Train-to-train transfer of baggage will be handled at no greater cost than at present which is two pieces of baggage for each coupon rate where same can be handled without special service. If special service is required where the connection is under three hours, then a charge will be made of $7.50 per truckload. These charges are the same as we are now paying.
* If special transfer of baggage is required before or after the regular hours of service, namely, 8:00 AM to

PLAINTIFF'S EXHIBIT 25 (Continued)

5:00 PM, the charge will be no greater than we are now paying which is $7.50 an hour. In fact he suggested $5.00 an hour rate. One hour is considered ample time for any such transfer between any of the stations.

GENERAL REMARKS

Mr. Keeshin also advised that he intended to go into the field of pick-up and delivery of baggage in the Chicago area as well as handling large movements of baggage for groups such as shows, sports or any other groups of individuals requiring such special baggage transfer. However, these services, of course, are out of the scope of our contract and are special arrangements he intends to set up.

Mr. Keeshin advised he intended to set up a separate company to be incorporated in Delaware or Illinois with, at least, a $200,000.00 working cash fund and could secure additional $500,000.00 for this fund if found necessary.

It is the intention to take over as much of the drivers and other minor personnel of the Parmelee Company as will fit into his organization and will pass the physical requirements.

In addition, Mr. Keeshin informed us that the official personnel will be composed of those well versed in the handling of passengers and baggage and that he would give this company his personal attention until such time as it would be functioning smoothly.

PARMELEE TRANSPORTATION COMPANY

Mr. Markin referred to his original proposal of March 15, 1955 and the first discussion was given to item 3 which covered the escalator increase in per coupon cost commending with July 1, 1956 but on which no ceiling was indicated. This item was cancelled in its entirety and carried with it, in cancellation, item 4. Again there are some special charges which were discussed and not covered in his proposal and which would have to be confirmed. These charges are indicated by an asterisk (*) mark.

PLAINTIFF'S EXHIBIT 25 (Continued)

-3-

EQUIPMENT

Passenger

a. - Type

He intends to purchase thirty 12-passenger limousines type vehicles, similar to the twenty which he now has in operation but which will have power steering and power brakes. Also he will retain a number of the seven passenger limousines now in service. It is expected it will take at least twelve months to complete the replacement with the thirty 12-passenger limousine type vehicles. Baggage will be stored in the rear of these new vehicles the same as in the present type operated.

b. - Schedule

The present schedules which provide for the meeting of all trains will, of course, be maintained.

Baggage

a. - Type

He intends to purchase a sufficient number of larger trucks than those used for what he believes a more efficient operation of the present handling of checked baggage - they will not be of the trailer type. The present loading and unloading of baggage at the baggage-room will be maintained, that is, by station agent and driver.

b. - Schedule

The present service of two pick-ups and deliveries a day will be maintained - 8:30 AM to 7:00 PM. However, more frequent service is given when found necessary.

Charges for Services

Passenger

a. - Regular Transfer Service

First year - July 1955-56 - $1.20

Children - half fare
Furloughees - 85¢

PLAINTIFF'S EXHIBIT 25 (Continued)

-6-

Commencing with July 1, 1956 an adjustment of the coupon of one cent (1¢) for each increase of three cents (3¢) per hour in wages of the driver employees will continue yearly thereafter until the expiration of the contract (December 31, 1961) with a maximum charge of $1.25 per coupon. Discussion with Mr. Markin determines his opinion that he could possibly hold yearly increases to five cents (5¢) to direct wages. Under this plan our rates could increase two cents (2¢) a year but not above the ceiling of $1.25; also there is the possibility of an increase of more than five cents (5¢) in direct wages a year which would increase our per coupon rate accordingly, but again the ceiling is $1.25.

b. - Special Services

For groups traveling on special reduced rates he agreed to a 50 cent(50¢) per capita charge. Parties to move in buses or the smaller 12 and 7 passenger vehicles.

Baggage

a. - Regular Service

This would cover regular checked baggage and the charge, of course, is included in the per coupon rate.

b.- Special Services

Remains

Rate would be $7.50 including two coupons. The carriers now recover $5.10 of the $7.50 by making charge against passenger so that actually we are paying only the two coupon rate which includes transfer by vehicle of one passenger.

Train-to-train transfer of baggage will be handled at the present charge of two pieces for each coupon rate where not handled by special truck. If special truck is required, where connection is under three hours, a charge of $7.50 per truckload will be made. These charges are the same as we are now paying.

PLAINTIFF'S EXHIBIT 25 (Continued)

If special transfer of baggage is required before or after the regular hours of service given above, the charge will be $7.50 an hour, which is now in effect. One hour is considered ample time for any such transfer between any of the stations.

GENERAL REMARKS

Mr. Markin advised that the new equipment mentioned above, which will be purchased and put in service as promptly as available, will cost in the neighborhood of $500,000.00.

GENERAL INFORMATION

The members of the sub-committee advised, as a whole, that it would be necessary for them to present both of the above proposals to their management before they would be in position to advise a recommendation of either. Therefore, the sub-committee will again meet at Union Station at 10:00 AM, Friday, June 3, at which time their report to all Chicago Terminal Lines will be composed, as well as a recommendation, if any.

PLAINTIFF'S EXHIBIT 26

Chicago, Illinois
March 23, 1955 - N

Mr. J. F. Whittington:- 4

The sub-committee which for quite some time has been making a survey and study of the transfer of passengers and baggage in the city of Chicago, on March 17th met with the Parmelee Transportation Company. This concludes our interviews with the various companies who expressed interest in the transfer of passengers and/or baggage in the city of Chicago.

Mr. Morris Markin, Chairman of the Board, Parmelee Transportation Company, on March 15th, had written Chairman Padrick outlining the proposal of the Parmelee Company for the continued use of their service after June 30 of this year which is the terminate date of the carriers' present agreement with them. Only members of the sub-committee have been given copy of Mr. Markin's letter as it is felt that the information contained therein should be kept confidential until a later date when a full report of the sub-committee to all the Chicago Terminal Lines will be given.

However, so that you may be fully accuainted with what is transpiring, we are enclosing copy of Mr. Markin's letter and offer comments as to each of the numbered proposals as shown in his letter commencing at the bottom of page 2.

1. This will be the first time that the railroads and Parmelee Transportation Company have entered into a written agreement or any agreement beyond a fiscal year to year basis of July to June inclusive. It can be readily understood why he wishes this written agreement as he wants to be sure to be able to amortize the new equipment which he will purchase and which will require about a five year period.

2. This speaks for itself but we are of the opinion that there should be some sort of ceiling, otherwise the increases could go way out of proportion to what the carriers would be willing to pay.

PLAINTIFF'S EXHIBIT 26 (Continued)

J. F. Whittington - 4
March 23, 1955 2.

3. This speaks for itself and the comments of the above paragraph also apply to this proposal.

4. This speaks for itself.

5. We have had discussion with Mr. Tilquist, Baggage Agent, Grand Central Station, regarding just what this would involve in his department. We understand that presently the train baggageman makes up in triplicate two manifests, one covering baggage destined to Chicago only and the other for transfer. The baggage room receives two copies of the manifest and the third copy is sent to Mr. Eichner's office. The Parmelee Agent checks the baggage off our manifest, signs one which is retained by the baggage room and keeps one himself. He (the Parmelee Agent) then sorts the baggage as to depot and with the Parmelee driver prepares a manifest for each station. Therefore the only additional work involving our baggage room would be for them to sort the baggage as to stations when checking it off of a train baggage agent's manifests and at the same time making up in triplicate our own manifest for each station. In this regard it might be possible for the train baggage agent to make up in quadruplicate a separate manifest of baggage for each station, one copy to go to Mr. Eichner's office and three to the baggage room. This, of course, is a new departure for the train baggage agent and we do not know whether or not such a procedure is permissible in our agreement with them. This would eliminate the baggage room making up the manifest and all that would be necessary for them would be to sort the baggage and check against the manifest for each station. This is a matter that you may wish to discuss with Mr. Eichner. Incidentally, our baggage room say they can handle this arrangement either way without any additional help in the baggage room.

6. This speaks for itself.

PLAINTIFF'S EXHIBIT 26 (Continued)

7. This speaks for itself.

8. This speaks for itself and, of course, very favorably.

9. This speaks for itself.

It is expected that the sub-committee will meet about the 15th of April and we would appreciate any comments and advice from your office on this proposal of the Pamelee Transportation Company so that we, in turn, can give proper expression to our company's thoughts in the matter.

R. E. Coleman

PLAINTIFF'S EXHIBIT 27

Form 300 Ruled.

Plaintiffs Exhibit 27 Defendants Exhibit

THE BALTIMORE AND OHIO RAILROAD COMPANY

In the District Court of the United States, Eastern District of Illinois, Eastern Division — REPORT MINER, I.

Roy E. Fuller - Official Court Reporter

Filing June 3 1950 FILED 19

AUG 15 1950

AT 1 O'CLOCK

[illegible] Alton

[illegible] Bone

[illegible] [illegible]

Whittington [illegible]

[illegible] [illegible]

[illegible] Alton

[illegible]

Allegy Service at Miner Allegy June 13th

No written confirmation from Keeslin of some points [illegible] [illegible] sub-committee

Read [illegible] [illegible]

J. Meerow [illegible]

[illegible] Keeslin

[illegible] "

[illegible] "

[illegible] "

[illegible] "

[illegible] "

[illegible]

[illegible]

P. 082

PLAINTIFF'S EXHIBIT 27 (Continued)

THE BALTIMORE AND OHIO RAILROAD COMPANY

....., 19.....

P1083

PLAINTIFF'S EXHIBIT 27 (Continued)

THE BALTIMORE AND OHIO RAILROAD COMPANY

....., 19.....

PLAINTIFF'S EXHIBIT 28

MEMORANDUM J. F. WHITTINGTON

Chicago, Illinois
June 3, 1955 - N

MEETING OF SUB-COMMITTEE CHICAGO TERMINAL LINES IN CONNECTION WITH CHICAGO TRANSFER - FRIDAY JUNE 3, 1955

The sub-committee of the Chicago Terminal Lines met today to further discuss the Chicago transfer situation and subsequently prepare report for submission to all Chicago Terminal Lines. Also in attendance were Messrs. Whittington and Coleman of the Baltimore and Ohio Railroad, Mr. Comer of the Pennsylvania R.R., Mr. Brennan of the Northwestern R.R., Mr. Hearne of the Illinois Central R.R.. Chairman Padrick and Vice-Chairman Siddall.

Necessary additional discussion of the proposals of the Parmelee Transportation Company and J. L. Keeshin was had.

The sub-committee unanimously voted in favor of the Keeshin proposal.

However, there were several phases of the Keeshin proposal which needed clarification and confirmation. Therefore, Mr. Keeshin was called and asked to appear before the committee. This he did and the following matters were discussed:

EQUIPMENT

Mr. Keeshin advised he had today placed an order with the Litsinger Motors at Chicago and confirmed such order direct with the Ford Company at Detroit of the following:

50 - 6-passenger Ford Station Wagons
(3rd seat removed)
10 - 8-passenger Ford Station Wagons
(3rd seat would be retained but only used if necessary)
2 - Station Wagons to handle remains
40 - 20 ft. trailers
(side as well as end door openings)

PLAINTIFF'S EXHIBIT 28 (Continued)

-3-

EQUIPMENT (cont'd)

25 tractors
(Model C-600 which are cab over engine type)
4 tractors
(Model C-600 with long wheel base)

Mr. Keeshin will order five or six 23 seat or 30 seat passenger buses. Also will order 8-passenger Volkswagen automobiles with doors on each side of the body instead of on one side as on their standard models.

SALE OF PROPERTY

Mr. Keeshin informed us that he has just drawn his will which will prohibit the sale of any of his businesses for a period of ten years after death; after ten years the then current operating management will have first choice in its purchase.

COST PER COUPON - 4th AND 5th YEARS

Considerable discussion was had as to what could be expected in this direction. Again Mr. Keeshin confirmed his previous statements that he did not believe the direct wage increase would be more than ten cents (10¢) each year which would mean a maximum increase of two cents (2¢) a coupon for each year. He further advised that he would respect a verbal understanding that the rate would not exceed $1.27 a coupon at the fifth year; furthermore that before any negotiations with the Union he would first negotiate with the railroads during the fourth and fifth years.

Statement as above with regard to verbal understanding was for the reason that Mr. Keeshin considered it very dangerous to include in the contract any clause stipulating acceptable increase for the fourth and fifth years. By not including such a clause in the contract he would have more leeway in negotiations with the Union.

GENERAL REMARKS

Mr. Keeshin advised it would be satisfactory to include in the contract clause to the effect that his books would be open for inspection and he would submit an annual report, certified by a Public Accountant.

PLAINTIFF'S EXHIBIT 28 (Continued)

GENERAL REMARKS (Cont'd)

Mr. Keeshin also informed us that the present pickup and delivery rates on baggage would not be increased; furthermore, that he intended to make very serious efforts to increase this type of business by performing a more efficient and prompt service than now rendered. Of course, this feature is outside of the contract.

The sub-committee selected and approved the name "RAIL TRANSFER SERVICE", also that the color of all vehicles should be a shade of light blue similar to that noted on the Ford Station Wagons which this committee previewed yesterday.

It was the decision of the sub-committee that Chairman Padrick should act as agent for all railroads and draw up the contract accordingly. This contract would be subject to review by each of the Chicago Terminal Lines before signed by him as Chairman.

As a matter of information, the six carriers represented on the sub-committee totalled 68.48% of the total revenue reported the Parmelee Company during the years 1951, 1952 and 1953.

Motion was made and seconded that if the Chicago Terminal Lines accepted proposal as made by Mr. J. L. Keeshin, notice would be given the Parmelee Transportation Company that their service would be terminated by the railroads 90 days after July 1, 1955 with a clause stating that if the Parmelee Transportation Company drivers went on strike July 1st, 1955, then the services of that company to the carriers would terminate at the close of business June 30, 1955. Incidentally, in this regard, Mr. Keeshin advised that upon given 24 hours notice he would set up an emergency service to take care of not only the transfer of checked baggage but also the transfer of passengers with baggage - such emergency service to continue until such time as he could secure equipment now on order.

In conclusion, the sub-committee presented its report to Chairman Padrick who, in turn, has issued a call for meeting of all Chicago Terminal Lines at 10:00 AM, Monday, June 13. At this meeting the report of the sub-committee will be discussed and the matter voted on.

PLAINTIFF'S EXHIBIT 29

Whittington 5

MEMORANDUM

Chicago, Illinois
May 20, 1955

Mr. J. F. Whittington:-

Mr. Sidney Bone, Chairman of the sub-committee just called me at ten minutes to five today advising that Mr. Markin had changed his formula for the coupon charges as follows:

Basic charge $1.20 effective July 1, 1955. The maximum rate that would be charged thereafter would be -

July 1, 1956 - - - - - - - - -	$1.22
July 1, 1957 - - - - - - - - -	1.23
July 1, 1958 - - - - - - - - -	1.24
July 1, 1959 to June 30, 1960 -	1.25

The rate would increase one cent (1¢) per coupon for each three cents (3¢) of wage increase but not to exceed the maximum rate as shown above. As example - If he was obliged to increase wages three cents (3¢) effective July 1, 1956, the rate of the coupon would increase one cent (1¢) or total $1.21. This as against the maximum shown of $1.22. If he had to give more than the three cent increase, say, nine cents (9¢), it would mean three cents (3¢) increase in coupon to the carriers, he would only request a two cent (2¢) increase or $1.22, as this is the maximum agreed upon.

Mr. Bone advises he was getting this information out by mail today.

Plaintiff's Exhibit 29 Defendant's Exhibit ( ) Identified ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

S. F. G. Nelson

AUG 15 1960

P.S. - I believe Mr. Markin is doing this to protect himself from the Unions asking too great an increase in any one year. This would be part of his bargaining - that the carriers will only allow him to increase his rate so much each year.

PLAINTIFF'S EXHIBIT 30

Plaintiffs Exhibit 30 Defendants Exhibit

MEMORANDUM

In the District Court of the United States, Northern District of Illinois, Eastern Division
No. 56 C 323

Mem. Rec'd. BEFORE MINER, J.

Chicago, Ill., [illegible] Official Court Reporter

Mr. Sidney Bone, Chairman of the sub-committee called me at 4:55 pm today advising that Mr. Markin had changed his formula for the coupon charges as follows:

Basic charge $1.20 effective July 1, 1955. The maximum rate that would be charged thereafter would be:

1955	$ 1.20
July 1, 1956	1.22
July 1, 1957	1.23
Jul, 1, 1958	1.24
July 1, 1959 to June 30, 1960	1.25

The rate would increase one cent (1¢) per coupon for each three cents (3¢) of wage increase but not to exceed the maximum rate as shown above. As example - If he was obliged to increase wages three cents (3¢) effective July 1, 1956, the rate of the coupon would increase one cent (1¢) or total $1.21. This as again t the maximum shown of $1.22. If he had to give more than the three cent increase, say, nine cents (9¢), it should mean three cents (3¢) increase in coupon to the carriers, he would only request a two cent (2¢) increase or $1.22, as this is the maximum agreed upon.

Mr. Bone advises he was getting this information out by mail today.

I believe Mr. Markin is doing this to protect himself from the Unions asking too great an increase in any one year. This would be part of his bargaining -- that the carriers will only allow him to increase his rate so much each year.

J. F. Whittington

PLAINTIFF'S EXHIBIT 31

FILED
AUG 15 1955
AT O'CLOCK
ROY H. ...

Plaintiffs Exhibit 31 Defendants Exhibit ( ) Idem. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
BEFORE MINER, J
Roy E. Fuller - Official Court Reporter.

Chicago, June 21, 1955 - z

JGE 3 r 3

Mr. S. F. G. Nelson:

A meeting of the Chicago terminal baggage agents was held in the Traffic Club of the Palmer House today to discuss with representatives of Mr. Keeshin, the various terminal requirements in connection with the handling of crosstown baggage.

This discussion included the handling crosstown of through interline baggage, space to space to space baggage and that checked from station to parcel room. Also included was a brief outline of railroad baggage charges and the accounting procedure used to report them.

While no definite plan was set up by the Keeshin people to handle the transfer of baggage and remains, it appears that trailers will be set up at all stations where they are needed during the previous afternoon or evening for pre-loading during the night and following morning. These will be pulled and taken to proper station when loaded. Smaller terminals having less baggage will be able to utilize one trailer for several stations. Remains to be handled in stationwagon type vehicles.

It was also mentioned that while the Keeshin people were willing to duplicate every service now offered by Parmelee, they felt that a mutual savings could be affected by railroad employes doing some of the work now performed by Parmelee men. Under this proposal our men would load, unload and waybill all transfer baggage, and Keeshin would be responsible only for the drayage between stations.

As the matter now stands Keeshin would maintain no central platforms of their own, but would make all movements direct, this apparently includes city pick up and delivery which they intend to include among their services.

All of these proposals, as I understand, are to be set up in a memorandum to serve as a basis for the contract between the railroads and Keeshin.

PLAINTIFF'S EXHIBIT 31 (Continued)

Mr. S. F. G. Nelson June 21, 1955.

Most of the features contained in these proposals are quite different from our present method of operation, but we could perform our part of the operation, should it be desired.

However, insofar as we are concerned, any additional duties for our baggage crew which consists of two men on each shift, would undoubtedly necessitate more help, and it would involve clerks, rather than handlers.

F. A. Tiiquist

cc-Mr. C. K. Strader
Mr. L. S. Eichner

PLAINTIFF'S EXHIBIT 32

Plaintiffs Exhibit 32 Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J. No.

Roy E. Fuller - Official Court Reporter

June 23, 1955

MEMORANDUM - Mr. R. E. Coleman:

It would appear from the attached that Mr. Keeshin is not quite set in arrangements for handling of checked baggage between stations. You will recall he originally informed us that he would have a centralized point for the assemblage and distribution of baggage; it would now appear he has changed his mind for reasons best known to himself and is reverting to trailer operation direct from one station to another where there is sufficient amount of baggage moving and at the smaller terminals one trailer making distribution to all other terminals. I am wondering if this wouldn't slow up the movement of baggage from our station to the other stations.

In addition, I feel that Keeshin is hedging from the original arrangement of his own people loading and unloading trailers except after their 40-hour period when our baggage room employees can't perform this service. They are now asking that our baggage room people perform this service at all times. We may be able to get by at our station without additional personnel but I don't think this would be possible in the larger stations, such as Union Station, North Western, etc.

Furthermore, if our baggage room waybill, as well as load and unload this baggage, it would lift the entire responsibility from Keeshin as to condition of baggage since at no time would his personnel handle same. I can see where we can waybill it and they would accept exceptions as noted on our waybill but do not feel we should give into any arrangement whereby the complete station handling is by our own baggage room personnel.

I am sure Keeshin set up his costs on the basis of his personnel loading and unloading baggage because at no time did the sub-committee say our baggage room people would perform this work. Therefore, what the mutual savings would be I cannot understand because if the carriers have to add more personnel in the baggage room it would be the railroads who would be losing money and Keeshin alone making a saving.

S. F. O. Nelson

PLAINTIFF'S EXHIBIT 33

TRUNK LINE-CENTRAL PASSENGER COMMITTEE
WESTERN PASSENGER ASSOCIATION

January 11, 1955

TRANSFER OF PASSENGERS AND BAGGAGE
BETWEEN STATIONS IN CHICAGO

Messrs:

J J Alms
R S Amis
A N Anderson
2-R T Anderson
F H Baird
J A Barrett
R F Berndt
3-J L Bickley
2-S W Bone
3-J R Brennan
3-I C Bruce
R E Coleman
E R Comer
H G Gillis
W R Godley
E E Gordon
H E Hay
E M Holt
R E Jamieson
2-G R Kimbel
G G Kottenstette
2-T E LeCueur
P G Nagle
2-T E Nerland
2-R W Ohlman
A G Oldenquist
E E Pierce
W J Rouch
H Sengstacken
G F Sherman
R R Spangenberg
R E Towns
2-R B Weaver
J F Whittington

(Chicago Terminal Lines)

Gentlemen:

For your information, we enclose copy of letter dated January 5, 1955, from Mr Sidney W Bone, Chairman of Committee of Chicago Terminal lines, on the subject indicated in heading hereof.

The question has been docketed for consideration at meeting of Chicago terminal lines to be held February 1, 1955.

Yours truly,

A J WINKLER

E B PADRICK

Attachment
List P-7
150-W

PLAINTIFF'S EXHIBIT 33 (Continued)

Att. to List P-7

C
O
P
Y

NEW YORK CENTRAL SYSTEM
LaSalle Street Station
Chicago 5, Ill.

January 5, 1955

Mr. E.B. Padrick, Chairman
Western Passenger Association
Chicago, Illinois

Dear Mr. Padrick:

The committee composed of the following lines

A.T.& S.F.
B.& O.
C.& N.W.
I.C.
N.Y.C.
P.R.R.

to study the transfer situation, Chicago, and to study the various contractors capable of performing the operation at a price better than that which we are achieving today, makes the following report -

Committee determined thirteen operators were of sufficient size and financially able to carry on the work, being

Hertz Driv-Ur-Self
Gray Line
Willett
Dixon
Carroll
Railway Express
Landon
Keeshin
Ayers
Lasham
Rock Island Transit
Chicago Tunnel
Engelhart of New York

Accordingly, under date of July 21, an outline of the work was prepared and identified as Statement No. 1, which, in a general way, itemized the Chicago transfer situation and this statement was delivered to each of the prospective contractors. Further, on September 15 and September 16 members of this committee interviewed all contractors who were interested, again emphasizing the fundamentals of the transfer at Chicago desired by the Chicago Terminal Lines, being the adequate handling of passengers and checked baggage between stations and we itemize next the preference expressed by the respective contractors that were named above -

Willett - This company was interested in transfer of passengers and checked baggage and after a complete conference with the committee Mr. R. S. Wyer stated that his company would submit a proposition to the committee which would price their proposal. To date we have not had this company's proposal - however during the first week of November all contractors were again reminded that their proposal must be in the hands of the committee by December 6. We understand that

A 73 (2 wi)

PLAINTIFF'S EXHIBIT 33 (Continued)

Mr. Wyer has contacted some members of the committee individually, desiring additional information, which would indicate that they are still interested in the proposal.

Landon - This company was interested in the transfer of checked baggage only and submitted a proposal accordingly.

Keeshin - This company has submitted a proposal for the handling of both passengers and checked baggage which is slightly reduced from the price which we are paying, or $1.70 with the price of the coupon tied into an escalator clause similar to that which we have with Parmelee today. The proposal contains a provision whereby station forces would load and unload trailers which would be hauled between the stations by tractors, and the proposal indicates more transfer trips than are presently being made. We would call your particular attention to the fact that this would be an increase in the work of station forces. The Keeshin plan outlines purchase of new station wagon type equipment to be built by a Detroit organization and the hand luggage would be placed on top of the vehicle. Also, the vehicle is radio equipped and air-conditioned, the radio facilitating dispatch of cars between stations.

The Railway Express Agency, offering no outright proposal, indicated that they would handle this for the carriers at a 15% plus-cost basis. The interview with the Railway Express representative indicated that they would not be interested in handling of passengers, but only baggage, and further indicated that they would not be interested in a per-piece charge.

Engelhart of New York - Indications that he might be interested in the arrangement did not come to the committee until late, and under the circumstances it might be anticipated that more time is desired by him to accumulate statistics and formulate a reply.

All of the other companies named as being probable contractors have twice again been admonished to let this committee have their proposals, but to date we have had no reply from any of the above excepting those itemized.

This committee would also direct your attention to proposal originating at LaSalle Station, the details of which are quoted in the appendix attached hereto, and to facilitate accumulation of statistical data the members of this sub-committee have been investigating the workability of this proposal at each of the Chicago Terminals. The committee feels that it would be desirable to have a committee composed of station baggage representatives review this latter proposal further, or other proposals that may be presented, and submit any recommendation that they may have with respect to the handling of checked baggage between stations.

Progress of this committee thus far is respectively submitted - we understand that the committee will remain intact until such time as remaining contractors' proposals have been properly catalogued, and further report then made to the general committee.

Yours very truly,
/s/ Sidney W. Bone - Chairman
R.T. Anderson, A.T.& S.F. R.R.
J.R. Brennan, C.& N.W. Ry.
R.E. Coleman, B.& O. R.R.
E.M. Holt, Pennsylvania RR
G.R. Kimbel, I.C. R.R.

Enclosure
Copy Mr. R.T. Anderson
Mr. J.R. Brennan
Mr. R.E. Coleman
Mr. E.M. Holt
Mr. G.R. Kimbel

PLAINTIFF'S EXHIBIT 33 (Continued)

C O P Y Att. to List P-7

Chicago, Illinois
December 10, 1954

Mr. S. W. Bone: File : YY

In accordance with your request for a study of the movement of baggage across town at the LaSalle St Station and as an alternate service to Parmelee account the curtailment of Parmelee service and the increasing cost of Parmelee service, we submit the following proposal.

Our proposal is that each terminal company at each of the Chicago stations assume the responsibility of moving the baggage from their inbound trains across town to the appropriate connection. It is thought that each terminal company will use the truck service the most convenient and economical which in some cases might be a truck owned by the individual railroad and in other cases it may be a truck leased by a trucking concern.

According to our study this service could be performed at LaSalle St Station by leasing 3 trucks from the Rock Island Motor Transit Co., and using 1 truck that we already have leased from the Rock Island Motor Transit Co., on a 50% basis. These trucks can be leased for a cost of $106.00 per month, including gasoline, maintenance and licenses. The trucks will be manned by members of our organization at a cost per day of $14.30 per truck driver.

The details of this service is submitted in the statement below showing the cost per month:

	3 trucks
Truck rental	$ 371.00
Salary	2,574.00
Vacation pay	141.50
6% payroll tax	188.90
Account'g Exp 2% of salary	60.00
Gen'l Supervision Exp	100.00
Chauffeur's Licenses	14.00
Insurance on trucks	21.83
Miscellaneous	500.00
Total cost per month	$ 3,971.23

The miscellaneous item of $500.00 in the above statement is for additional baggage service after and above the scheduled service and for items yet undetermined. A great part of this miscellaneous expense will probably not be used. The above cost of operating this service is $47,652 per year which could be split between the various roads using LaSalle St Station on a "use" basis.

Based on a study made for your office in March of last year, if we leave the cost of handling corpses to the passenger as at present and charge 20¢ (twenty cents) a hundred for handling newspapers which is 5¢ less than Parmelee now charges, we could recover $9,100 per year from the total cost of $47,652. It is estimated that we could handle the baggage for about .30¢ per piece.

Several advantages would ensue from handling the baggage in this manner:

PLAINTIFF'S EXHIBIT 33 (Continued)

1. The baggage can be handled cheaper by using our own forces than by hiring an outside company such as the Parmelee Co. but we are unable to state just what the saving would be, as the Parmelee expense item also includes the handling of passengers in Parmelee buses.

2. We will restore full service to and from our principal trains that was curtailed several months ago by the "two a day" delivery of the Parmelee Co. It is proposed to furnish service on a basis of 16 hours a day and on a part time basis of 8 hours a day.

3. The railroad would have direct control over the service rendered, fixing responsibility for the quality of the service, and also for the extent of the service.

4. This plan would also eliminate the money paid to the Parmelee Co., for handling of "Train to Train Hand Baggage". This is now averaging about $350. per month.

(sgd) R.E. Dean

General Baggage & Mail Supvr.

RED/jtm

PLAINTIFF'S EXHIBIT 33 (Continued)

Att. to List P-7

STATEMENT

Chicago, July 21, 1954

TO ALL CONCERNED:

(The following information is prepared to give prospective companies who desire to bid upon the handling of transfer of passengers and baggage through Chicago an opportunity to know the size of the job which is contemplated) -

In Chicago there are eight passenger stations (six so called steam train terminals and two electric train terminals), as itemized next:

Dearborn Station	Dearborn and Polk
Grand Central Terminal	Harrison and Wells
Union	Canal and Adams
Central	Michigan and Eleventh Place
LaSalle	LaSalle and Van Buren
Northwestern	Madison and Canal
Chicago-North Shore	Adams and Wabash
Chicago-South Shore	Randolph and Michigan

and the greatest distance between any two terminals is approximately 1-3/4 miles, otherwise the terminals listed are generally considered within the downtown area of Chicago although not exactly within the loop area.

The railroads serving Chicago have considered it to be to the advantage of their services, and a convenience to their passengers, that a transfer of persons and baggage be provided between the Chicago terminals - and this service has been performed by the Parmelee Transportation Company, which company only last year celebrated its 100th Anniversary.

We would have it known that the railroads serving Chicago have enjoyed their relationship with the Parmelee Transportation Company, and they feel that the services of each has contributed to the success of the other, notwithstanding the economic conditions are such that the railroads must not undertake to pay a greater fee for the services performed than is necessary, and because the greater portion of the transfer fee paid to the Parmelee Transportation Company is absorbed by the outbound railroad. It is, therefore, necessary to canvass the companies capable of handling such a transfer of passengers and baggage and whose reputation and vehicle equipment would indicate the ability to satisfactorily perform the services - and at a fee attractive to the rail carriers who, as stated above, absorb the charges accruing to the Chicago transfer.

The specifications of such a transfer job are, briefly, as follows:

1 - Transfer approximately 1½ million passengers a year -

In 1951	1,648,577
1952	1,616,386
1953	1,429,847
Average	1,564,937

1,564,937 being the average number transferred in the three-year period, is 140,000 more than handled in 1953. According to our figures the most passengers are transferred in June, July and August.

PLAINTIFF'S EXHIBIT 33 (Continued)

Percentagewise, of the years total
9.1% is transferred in January
6.5% " " " February
7.[illegible]% " " " March
7.[illegible]% " " " April
7.5% " " " May
10.1% " " " June
10.1% " " " July
10.5% " " " August
8.5% " " " September
7.[illegible]% " " " October
6.5% " " " November
9.5% " " " December

2 - The transfer of passengers is required between trains arriving and departing Chicago - trains arrive Chicago beginning at 5:00 A.M. and either arrive or depart Chicago beyond midnight.

3 - Hand luggage carried with passengers should be transferred in the same cab. Therefore the number of seats utilized in a cab depends upon the amount of luggage that can be placed in the baggage compartment of the cab; excepting briefcases, etc., all luggage is placed in luggage compartments of the cabs - none is placed in the seats.

4 - About 90,000 pieces of checked baggage, ranging in size from a small overnight case to a salesman's trunk, are transferred between the eight stations each month, or more than one million pieces per year. This part of the service is better performed in trucks which deliver and receive their loads at the special platforms provided for such a purpose in each terminal.

5 - Transfer of corpse is an important consideration, and, although the number of cases is unpredictable, it is not uncommon to handle as many as eighteen to twenty remains in one day between the different terminals.

The committee trusts that the items listed above will give you an idea of the job that is to be performed and, if you desire, the committee will meet with you and answer additional questions to give you sufficient information to permit you to give a price for which you will perform the service of transferring passengers and luggage between stations in Chicago.

RECAPITULATION

1 - Transfer approximately 4,000 passengers per day.

2 - Workday begins with early trains.

3 - Cabs with space for hand luggage.

4 - Transfer approximately 3,000 pieces of baggage per day.

5 - Transfer of corpse.

The foregoing is intended to be illustrative but not necessarily conclusive.

A 77, [illegible])

PLAINTIFF'S EXHIBIT 34

Chicago, Illinois
January 7, 1955 - N

FILE

Mr. J. F. Whittington:- 4

As previously informed you the Chicago Terminal Lines, early last year, appointed a sub-committee to make a survey of the Chicago transfer situation, particularly from an economic rather than a service standpoint as the latter has been satisfactory in its handling by the Parmelee Transportation Company.

For your perusal I am enclosing copy of the report of this committee under the chairmanship of Mr. Sidney W. Bone, Passenger Traffic Manager of the New York Central R.R., to Chairman E. B. Padrick. This report is just about as good a resume of the actions that have taken place as we could report separately.

In addition we are enclosing copies of the proposals referred to in Mr. Bone's report covering the F. Landon Cartage Co., J. L. Keeshin, and Mr. R. E. Dean, General Baggage and Mail Supervisor. La Salle Street Station, Chicago.

Should any of the other contractors subsequently submit proposals, even though the deadline is long past, we will, of course, see that you are kept fully informed.

R. E. Coleman

CC-Mr. L. S. Eichner:-

PLAINTIFF'S EXHIBIT 35

THE BALTIMORE AND OHIO RAILROAD COMPANY
TRAFFIC DEPARTMENT
GRAND CENTRAL STATION
HARRISON AND WELLS STREETS
CHICAGO 7, ILL.

R. E. COLEMAN
PASSENGER TRAFFIC MANAGER
S. F. G. NELSON
ASSISTANT GENERAL PASSENGER AGENT

September 8, 1954 - 1

Mr. W. A. Scheeder,
Vice President
Parmelee Transportation Co.,
300 North Desplaines St.,
Chicago, Illinois

Dear Bill:-

Your organization handled a big job in a most effective manner Sunday afternoon, September 5.

You transferred almost 400 service men including 300 with duffle bags from our station to the North Shore and Union Stations, dispatching them all within thirty minutes.

Real team work was indicated including the advance planning which obviously was necessary, an all-out effort by your agents Barkey and Kavanaugh on duty here, and complete cooperation on the part of every driver involved.

My associates have called this outstanding performance to my attention and we want you to know that the efforts of all concerned in your organization are greatly appreciated.

Yours truly,

R E Coleman

Passenger Traffic Manager

Plaintiff's Exhibit 35 Defendants Exhibit (✓) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

12C323

PLAINTIFF'S EXHIBIT 36

MEMORANDUM

Chicago, Illinois
June 13, 1955

At 10:30 AM today, June 13, 1955, members of the Chicago Terminal Lines met in Room 336 Union Station as per call for meeting dated June 3, 1955. The carriers, in most instances, were represented by top traffic officers because of the importance of the question at hand, that is, transfer of passengers and baggage between stations in Chicago.

At the request of Chairman Padrick, Sub-Chairman Bone gave a resume of the entire action of the committee since its inception in April, 1954. In addition, various members of this sub-committee further added to Mr. Bone's remarks as well as jointly answered questions from the floor.

Mr. Alms, General Passenger Traffic Manager of the Burlington, advised that several months ago he had been approached by a Mr. Forgash, President of Universal Carloading at Chicago, asking that Keeshin be given favorable consideration.

It was determined that in addition to the Nickel Plate having a written contract with the Parmelee Transportation Company, the expiration and cancellation clause, if any, being unknown to the member in attendance, the Erie has a written contract signed in 1915 but bearing a 60 day cancellation clause.

Chairman Padrick placed before the meeting, as a motion, the recommendation of the sub-committee, which was seconded by the C&NW Ry. This is covered in detail in paragraph 5 page 3 of memorandum dated June 3, 1955. Also that Chairman Padrick would act as agent for all carriers and with the assistance of legal aid would prepare a draft contract with Keeshin on a five year basis at rate of $1.20 for the first year, $1.22 for the second year, $1.23 for the third year and for the fourth and fifth years, one cent increase for each five cents of direct wage increase; but the latter only after negotiation with the carriers. No maximum rate would be a part of the contract for reasons previously mentioned and covered on page 2 under the caption - "Cost per coupon - 4th and 5th years", of memorandum dated June 3, 1955. Contract would also include clause as to decrease in per coupon rate if direct wages were decreased. All phases of this transfer service previously discussed would be incorporated in the contract.

PLAINTIFF'S EXHIBIT 36 (Continued)

The above motion was put to a vote and was passed unanimously.

Chairman Padrick will write necessary letters of notification to the Parmelee Transportation Company, advising them of the termination of services and to Mr. Keeshin as to the acceptance of his proposal, subject to written contract.

The name of the new company and the color scheme of the vehicles is left to the discretion of the sub-committee and Mr. Keeshin.

If any of our interline tickets have the name "Parmelee" printed thereon in the transfer coupon, it is a matter that should be taken up with our legal people as to the retention of same. Eastern Tariff T-3, ICC No. 302 which contains mention of the word "Parmelee" will, of course, have to be supplemented.

The system folders of some carriers, including our own, contain the name "Parmelee" and again our legal people should be consulted as to retention of same, until reissued.

PLAINTIFF'S EXHIBIT 37

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois

Eastern Division

In the Matter of	)	
	)	In Proceedings
KEESHIN FREIGHT LINES, INC.,	)	for Reorganization
Debtor,	)	
KEESHIN MOTOR EXPRESS CO., INC.	)	No. 46B 26
SEABOARD FREIGHT LINES, INC.,	)	
NATIONAL FREIGHT LINES, INC.,	)	
Subsidiary Debtors.	)	

PETITION OF THE BALTIMORE AND OHIO RAILROAD COMPANY FOR LEAVE TO INTERVENE.

To The Honorable The Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The Petition of The Baltimore and Ohio Railroad Company respectfully shows:

1. That it is the owner of Series I Notes of Keeshin Freight Lines in the amount of $28,400.00 and Series III Notes in the amount of $150,000.00, a total of $178,400.00, and that the said Debtor Keeshin Freight Lines, Inc., is jointly and truly indebted to this Petitioner.

2. This Petitioner is advised and therefore alleges that many issues and questions are and will be pending before the Court in this proceeding in which it has and will have a material interest and because of the character and extent of its claim

PLAINTIFF'S EXHIBIT 37 (Continued)

as a large creditor of said Debtor, it is necessary that it be permitted to intervene generally in this proceeding so that it may take a position as a party on all matters coming before the Court, file pleadings herein and have the right to seek appeal from any orders which it deems adverse to its interests.

WHEREFORE, Your Petitioner prays that it be permitted to intervene generally in these proceedings and may be admitted and constituted as a general party hereto, with the right to receive notices of all applications and petitions, to receive copies of all papers filed herein, to file motions and pleadings and other papers, to be heard by testimony and argument and to take such other steps and proceedings in this cause as it may deem proper, and the Petitioner may have such other and further relief in the premises as to this Court may seem just.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

By /s/ H. B. Voorhees
Vice President.

State of Illinois)
County of Cook) SS.

H. B. Voorhees, being duly sworn, deposes and says, that he is Vice President of The Baltimore and Ohio Railroad Company, a Railroad Corporation, the corporation making the foregoing petition; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; and that he further believes said petition was made in good faith.

/s/ H. B. Voorhees

Subscribed and sworn to before me
this 18th day of March, 1946.

(Seal)

/s/ Thomas M. Butters
Notary Public.

E. W. Lademann,
Grand Central Station,
Chicago 7, Illinois,
Attorney for The Baltimore and Ohio
Railroad Company.

PLAINTIFF'S EXHIBIT 37 (Continued)

No. 46 B 26

U.S. District Court, Northern District
of Illinois, Eastern Division

In the Matter of

Keeshin Freight Lines, Inc.,
Debtor
Keeshin Motor Express Co. Inc.
Seaboard Freight Lines, Inc.
National Freight Lines, Inc.
Subsidiary Debtors

In Proceedings for Reorganization

PETITION FOR LEAVE TO INTERVENE
OF THE BALTIMORE AND OHIO R.R.Co.

E. W. Lademann,
Attorney,
315 Grand Central Station
Chicago 7, Ill.

Wabash 2211

PLAINTIFF'S EXHIBIT 37 (Continued)

CERTIFIED COPY (Rev. April 1963) D. C. Form No. 38

United States of America

NORTHERN DISTRICT OF ILLINOIS } ss:

I, ROY H. JOHNSON, Clerk of the United States District Court for the NORTHERN District of ILLINOIS, do hereby certify that the annexed and foregoing is a true and full copy of the original Petition filed March 19, 1946 In the Matter of KEESHIN FREIGHT LINES, INC., Debtor; KEESHIN MOTOR EXPRESS CO., INC. SEABOARD FREIGHT LINES, INC., NATIONAL FREIGHT LINES, INC., Subsidiary Debtors, NO. 46 B 26

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at CHICAGO, ILLINOIS this 19th day of April, A. D. 19 60

ROY H. JOHNSON
Clerk.

By Sally Kenney
Deputy Clerk.

FPI ATLANTA—12-3-57—40M—39

PLAINTIFF'S EXHIBIT 38

COPY

Plaintiffs Exhibit 38 Defendants Exhibit ( ) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller - Official Court Reporter
BEFORE MILLER, J.

HAIGHT, GOLDSTEIN & HAIGHT
LAWYERS
THE ROOKERY
209 SOUTH LASALLE STREET
CHICAGO 4, ILLINOIS
CENTRAL 6-7577

SC 373

September 24, 1955

The Honorable Richard J. Daley
Mayor of the City of Chicago
City Hall
LaSalle and Randolph Streets
Chicago, Illinois

My dear Mr. Mayor:

1. On October 1, 1955, the 21 railroads which use the 8 terminal railroad stations located in the downtown area of Chicago will inaugurate a new station-to-station passenger and baggage transfer service, the entire cost of which will be absorbed by these railroads. This new service will be made available exclusively to the out-of-town through passenger who holds a transfer coupon entitling him, on arrival in Chicago en route to another city, to the free transfer of himself with his accompanying hand baggage from his incoming station to another station shown on his coupon, where his outgoing train departs.

The 21 railroads have entered into a written Agreement with Railroad Transfer Service, Inc., effective October 1, 1955, to carry out for them this required free station-to-station transfer service, as appears from the enclosed first 5 pages of the mimeographed copy of that Agreement. The passenger motor vehicles which will be used by Railroad Transfer Service, Inc. to take these coupon holders to their designated outgoing stations will be used solely for that purpose.

2. The railroads' tariffs on file with the Interstate Commerce Commission and the Illinois Commerce Commission provide for this free station-to-station transfer service where different stations are used by the inbound and the outbound railroads. The new service created for the purposes set forth in the enclosed pages of the Agreement is intended by the parties thereto to become part of the interstate railroad service performed as part of the stream of interstate commerce, and the motor passenger vehicles used in the performance of that service are intended to be devoted exclusively to the operations of these railroads as public utilities under the laws of Illinois.

3. Under the new service, the coupon holder will no longer be allowed to use his coupon to procure at the expense of the railroads a free ride for himself with his accompanying hand baggage to a hotel, residence, business or office building in the Loop of Chicago, in the nature of local taxicab service, now possible under the existing Farmelee Transfer Service arrangement with these railroads.

PLAINTIFF'S EXHIBIT 38 (Continued)

HAIGHT, GOLDSTEIN & HAIGHT

Nor will the passenger motor vehicles of Railroad Transfer Service, Inc. used in the new service accept noncoupon holders as cash fare passengers for transport between stations or from stations to a hotel or other terminus in the loop of Chicago, in the nature of local taxicab service, as the passenger vehicles now used in the Parmelee Transfer Service now do.

This wide cleavage between the limited new station-to-station transfer service and the present interstation and loop terminus Parmelee Transfer Service, and the wide cleavage between the limited public utility uses to which the passenger vehicles of Railroad Transfer Service, Inc. will be devoted exclusively and the additional local passenger transportation uses to which the passenger vehicles of the Parmelee Transfer Service are now devoted in part, is not generally understood in the public mind and among governmental authorities having jurisdiction thereover or concerned therewith.

For these reasons, is it appropriate at this time to bring the above information to your attention, to make clear the specifications of the new service and to set out the precise use of the passenger vehicles of Railroad Transfer Service, Inc. therein, in conformity with applicable Federal, State and Municipal laws.

Very truly yours,

Benjamin F. Goldstein
Attorney for Railroad Transfer
Service, Inc.

BFG:LL
cc. Mr. John C. Melaniphy
Acting Corporation Counsel
City of Chicago

Ald. Paul M. Sheridan
Chairman, Committee on Local
Transportation of the City
Council of City of Chicago

PLAINTIFF'S EXHIBIT 39

TRUNK LINE-CENTRAL PASSENGER COMMITTEE
WESTERN PASSENGER ASSOCIATION

Plaintiff's Exhibit 11 | Defendants Exhibit ( ) Iden ( ) Rec'd
In the District Court of the United States, Northern District of Illinois, Eastern Division
No. BEFORE
Ray E. Fuller - Official Court Stenographer
FILED
AUG 15 1950
AT O'CLOCK M.

April 19, 1956

TRANSFER OF BAGGAGE IN CHICAGO

Re 375

Messrs:

J J Alms	2-G W Done	E M Holt	A G Oldsiquist
2-R S Amis	3-I C Bruce	R E Jamieson	H Sengstacken
A N Anderson	R E Coleman	C C Kottenstette	G F Sherman
2-R T Anderson	E R Comer	2-T E LeSueur	3-R J Steiner
F H Baird	W R Godley	A A Mayer	R E Towns
J A Barrett	E E Gordon	P G Nagle	2-R B Weaver
R F Berndt	2-B J Grenrood	2-T E Nerland	J F Whittington
3-J L Bickley	H E Hay	2-R W Ohlman	R C Wood

(Chicago Terminal Lines)

Gentlemen:

For your information, the following has been received from Mr A Baxter, General Manager, Railroad Transfer Service, Inc.:

...

Effective 12-1-55

The charge for handling baggage checked to Chicago and then transferred to another station will be changed from the present rate of $1.20 plus tax for all baggage to a new rate of:

$1.20 plus tax for the 1st piece
and .50 " " " each additional bag
.75 " " " " " trunk

Remember this only applies where the baggage is checked to Chicago and rechecked beyond. IT DOES NOT INVOLVE THE RED CHECK BAGGAGE.

/s/ A Baxter
General Manager

...

Yours very truly,

A J WINKLER

E B PADRICK

Copy to:
2-J J Nolan

P-7
150-W

PLAINTIFF'S EXHIBIT 40

SPECIAL FILE

TRUNK LINE-CENTRAL PASSENGER COMMITTEE
WESTERN PASSENGER ASSOCIATION

June 22, 1951

TRANSFER ARRANGEMENTS IN CHICAGO

Messrs:

R S Amis
2-R T Anderson
L W Bade
F H Baird
R A Bishop
S W Bone
E C Brown
3-G L Bryson
R E Coleman
E R Comer
A Cotsworth, Jr.
3-H C Duvall
A T Erickson
H G Gillis
W R Godley
E E Gordon
H E Hay
T M Hayes
E M Holt
L L Huntoon
R E Jamieson
2-G R Kimbel
2-T E LeSueur
3-A D Martin
T E Nerland
R W Ohlman
A G Oldquist
R A Pearce
E E Pierce
W J Roach
H Sengstacken
5-G F Sherman
R R Spangenberg
R E Towns
J F Whittington

(Chicago Terminal Lines)

PLEASE REPLY BY JULY 6, 1951

Gentlemen:

At meeting of the Chicago Terminal Lines, February 9, 1951, under Subject 3, the following committee was appointed to make a study of all phases of the transfer of passengers and baggage in Chicago, to determine the best methods that might be established for the handling of the traffic under existing conditions:

New York Central, Chairman
AT&SF
B&O
C&NW
Illinois Central
Pennsylvania

You will find attached copy of report of the committee, which is self-explanatory.

With respect to the second paragraph of the recommendation, it is indicated that Chairman Padrick should explore the necessity of the Chicago Terminal Lines continuing the payments as outlined in letter to Mr C L Passolt, Vice President and General Manager, Parmelee Transportation Company, dated November 29, which was attached to our promulgation of November 30, 1950.

PLAINTIFF'S EXHIBIT 40 (Continued)

TRANSFER ARRANGEMENTS IN CHICAGO

Messrs: Amis, Anderson, Bade, etc.

As indicated in our letter of November 29, 1950, the arrangement expires with the month of June 1951, in view of this it is not believed that there is any necessity for further negotiation with the Parmelee Company. However, in the event any advice is received from the Parmelee Company with respect to the continuation of these payments, Chairman Padrick will, as suggested in the recommendation, explore the necessity for the continuation of such payments, and, at that time, will handle the matter further with the Chicago Terminal Lines.

Unless advice is received by Chairman Padrick to the contrary on or before JULY 6, 1951, it shall be understood that the recommendation of the committee is approved and adopted.

Yours very truly,

V ARMOLD

E B PADRICK

Attachment

List P-7
130-W

Copy to: Mr J J Nolan

PLAINTIFF'S EXHIBIT 40 (Continued)

NEW YORK CENTRAL SYSTEM
Passenger Traffic Department

Chicago, June 18, 1951

Mr. E. B. Padrick, Chairman
Western Passenger Association
Union Station, Room 436
516 West Jackson Boulevard
Chicago 6, Illinois

Dear Mr. Padrick:

As Chairman of the Committee appointed by you (E.B.P. February 11, 1951) to study all phases of the transfer of passengers and baggage, Chicago, I am privileged to make the following report, with recommendations -

Committee members included -

Mr. George Gilman, A.G.P.T.M., A.T.& S.F.
Mr. S.F.G. Nelson, A.G.P.A., B.& O.R.R.
Mr. C. E. Quackenbush, A.G.P.A., C.& N.W.
Mr. H. J. Bienterfeldt, A.G.P.A., I.C.R.R.
Mr. E. M. Holt, G.P.A., Pennsylvania R.R.

and that committee, in its initial session, analyzed the scope of the work to be performed and reviewed a list of the companies possessing the apparent ability to perform an over-all transfer service between stations, Chicago.

The 12-month statement (July 1949 to June 1950, inclusive) itemized payments to Parmelee Transportation Company by Chicago Terminal Lines (E.B. P. November 30, 1950) in the amount of $1,405,475.30 for the transfer of passengers and baggage between stations, Chicago, and the committee estimated 10% of such payment accrued to checked baggage only, thus we determined approximately 100,000 passengers are transferred between stations in Chicago each month - this figure was subsequently confirmed in the investigations and interviews conducted by the committee. Also, it was further developed that approximately 80,000 pieces of baggage are checked through Chicago each month.

The magnitude of the work to be performed necessarily narrowed the field of capable organizations possessing the ability to perform the transfer service to the satisfaction of the passenger, the carriers, and the vehicle company.

Accordingly, the committee issued an invitation to

Parmelee Transportation Company
Chicago Gray Line, Inc.
Railway Express Agency

to meet with the committee, in turn, and discuss

1) Transfer of passengers with baggage between stations.
2) Transfer of checked baggage between stations.
3) City pick-up and delivery service.

PLAINTIFF'S EXHIBIT 40 (Continued)

The Parmelee Transportation Company reaffirmed their ability to perform the service required and stipulated the following additional purchase orders had been placed for equipment to be placed in the Chicago transfer service -

40 new baggage transfer trucks, first deliveries made in March, 1951,

85 new limousines, first deliveries expected in September, 1951,

and estimated present capital investment totaled over $500,000 within the city of Chicago, devoted to the transfer of passengers and baggage between railroad stations, plus a maximum of 250 drivers and 55 Passenger Agents.

The Chicago Gray Line, Inc. (Harry J. Dooley, President, April 16, 1951) replied as follows:

"It is our opinion that the Chicago Gray Line can provide an improved service, and very probably in the near future, at a lower cost to the affected rail lines. This to be accomplished by making more complete use of facilities and personnel engaged in this work, and by the introduction and use of modern transportation units designed to render a faster and more convenient service. It is with this thought in mind that we present for your consideration the following program:

"The Chicago Gray Line to provide transfer services for passengers and baggage, as those presently being performed by the Parmelee Transportation Company, at a cost to the affected railroads of $1.00 per passenger. Rates for other parallel services to remain the same as at the present time. This includes the pick-up and delivery of baggage at hotels and other metropolitan points.

"This offer is made with the earnest recommendation that we be given the latitude of making use of equipment of a different design and seating capacity than that in use at the present time. It, of course, being understood that all equipment used by us being adaptable to loading facilities and in keeping with the comfort and appearance necessary to maintain the high standard of service offered by the railroads today. Also, that the Gray Line be permitted to use the desk and office space allocated in the various terminals for the sale and servicing of sightseeing tours, U-Drive cars, and limousine services, in addition to the regular duty of transfer services."

The Railway Express Agency (Walter Reese, Vice President, Chicago, April 7, 1951) replied as follows:

"As stated to you at the time and from information given me as to figure this work is being presently performed by Parmelee, it could readily be seen the figure we would be in a position to quote would be so much in excess of what you are presently paying Parmelee that we could not compete with them."

PLAINTIFF'S EXHIBIT 40 (Continued)

Other organizations, for example

Dixon
Willett
Taxicabs

were analyzed and the committee determined that the transfer at Chicago is of such scope that it would be to the detriment of the carriers to designate a dual service wherein one organization would undertake to handle checked baggage and a second organization handle passengers.

Recommendations - After reviewing the magnitude of the work to be performed, the committee feels that the work and method of the Parmelee Transportation Company continue desirable, and it is our recommendation that the transfer of passengers and baggage, Chicago, remain with the Parmelee Transportation Company as long as the rates and service continue satisfactory to the Terminal carrying lines, Chicago.

Indications to the committee are reasonable that any stipulation beyond the charge of $1.00 for adults and 50 cents for children, covering added payments by the carriers to Parmelee Transportation Company, can be terminated as of June 30, 1951, therefore, it is our further recommendation that you, as Acting Chairman of the Chicago Terminal Lines, explore the necessity of Terminal lines, Chicago, continuing the payments outlined in your letter to Mr. C. L. Passolt under date of November 29, 1950.

Re Chicago Gray Line, Inc. proposition - the thinking of the committee favors present limousine type of service because of its flexibility. Notwithstanding, it is our recommendation that you, as Acting Chairman of the Chicago Terminal Lines, should acknowledge to Mr. Harry J. Dooley that the conditions of transfer of passengers and baggage between stations in Chicago, as performed by the Parmelee Transportation Company today, being satisfactory, it is not our disposition to change the present methods of operation - Likewise it is not our disposition to treat lightly his proposition and his proposition, as submitted, will be retained for future review should there be a material change in service or methods as presently performed.

Yours very truly,

/s/ Sidney W. Bone

Passenger Traffic Manager

Copy Mr. Geo. Gilman
Mr. S.F.G. Nelson
Mr. C.E. Quackenbush
Mr. H.J. Biesterfeldt
Mr. E.M. Holt

PLAINTIFF'S EXHIBIT 41

FOUNDED 1888

BAIRD & WARNER

INC.

CHICAGO 1

July 19, 1955

Mr. Hugh W. Cross
4924 Ft. Sumner Drive
Washington 16, D.C.

Re: 320 Margate Terrace, Deerfield, Illinois

Dear Hugh:

I talked to Mr. Diver on the phone this morning and he said that he had drawn up an agreement for Mrs. Erickson to sign agreeing to deliver the personal property as mentioned in my letter of July 12th.

He expected Mrs. Erickson in his office today to sign the contract and this agreement and he would send the signed copy of the agreement to you and also mail one to our office.

As soon as the agreement is signed by Mrs. Erickson I am going to take an architect friend of mine over to the house and get his ideas and the approximate cost of providing a room for your maid.

As soon as you receive the signed agreement relative to personal property I suggest that you send the $4,500 to Mr. Diver.

Please send me a copy of your letter as I want to keep my records clear.

Yours sincerely,

BAIRD & WARNER, INC.

Albert A. Wilbur

AAW/pw

COPY

PLAINTIFF'S EXHIBIT 42

FOUNDED 1855

BAIRD & WARNER

INC

CHICAGO 1

MAIN OFFICE
215 NORTH DEARBORN ST
CENTRAL 6 1890

REAL ESTATE
SALES & MORTGAGES
PROPERTY MANAGEMENT
APPRAISALS & INSURANCE

November 1[illegible], 19[illegible]

Mr. Clarence A. Diver
Diver, Diver and Ridge
[illegible] Madison Street
Waukegan, Illinois

Dear Mr. Diver:

Tried to reach you on the phone this morning, but was told you were out until later this afternoon.

I received the papers from Mr. Cross and am sending a letter instructing him to send the money to me so that if you have the title cleaned up believe we can close the deal Thursday or Friday of this week.

Yours sincerely,

BAIRD & WARNER, INC.

Albert A. Wilbur

AAW: W

Diver Sp[illegible]
[illegible]

PLAINTIFF'S EXHIBIT 43

November 10, 1955

Pl 43

MEMO:

Re: Erickson - Cross
Our File No. 81.3-A

Conversation had with Albert A. Wilbur:

Mr. Wilbur telephoned CWD and stated that in view of the Senate Committees investigation with reference to Hugh Cross, Mr. Cross was more anxious than ever to draw the deal and would gladly forfeit the $4500.00 already paid. CWD told Mr. Wilbur that we would not accept the forfeiture for $4500.00 in lieu of going through with the deal; that we would enforce the Contract by a suit for specific performance in the Circuit Court unless the deal was culminated.

Mr. Wilbur then stated that he had told Mr. Cross under the circumstances that he, as a friend of his, would be willing to put up the money to complete the contract and then resell the property as soon as possible.

Mr. Wilbur stated that he thought there should be an assignment of the contract. CWD stated that he would want to consider that before stating that Mrs. Erickson would agree to it and that he call Mr. Wilbur in the morning of November 17th.

CWD then conferred with DR and TWD and decided after the conference that inasmuch as the Deeds have been recorded showing the title in Hugh W. Cross and Helen M. Cross, his wife, as joint tenants; that no assignment of the contract was in order or necessary from any angle and that all that remainded to be done was the payment of the balance of the purchase price, the mortgage having already been assumed by the purchasers, as stated in the recorded Deeds.

PLAINTIFF'S EXHIBIT 43 (Continued)

-2-

Whatever arrangements Mr. Cross or Mr. Wilbur chose to make with reference to having Mr. Cross and his wife convey to a Trustee or whatever papers should be drawn to protect Mr. Wilbur is something we have nothing to do with and is distinctly in their hands to arrange as they see fit.

The main question here now is the payment of the balance of the purchase price in closing the deal.

CWD told Mr. Wilbur that he had the no tax letter, which with the Affidavit Mrs. Erickson is to sign would clear sub paragraph (a) and (b) under Item 15 and remove all material objections.

PLAINTIFF'S EXHIBIT 44

November 17, 1955

MEMO:

Re: Erickson - Cross
Our File No. 8123-A

In a telephone conversation with Mr. Wilbur, CWD pointed out that there was no need of having any assignment of the contract of purchase by Hugh W. and Helen M. Cross; that the Deed carrying the title had already been filed of record and if Mr. and Mrs. Cross desired to have the title transferred to another person or a bank as Trustee that it would necessary for them to make a Deed of conveyance to such grantees.

Mr. Wilbur stated that Mr. and Mrs. Cross would like to dispose of the chattel property. CWD stated that they would have to make a Bill of Sale to the person to whom they desired the title of the chattels transferred.

Mr. CWD stated to Mr. Wilbur that in order that everyone be protected, the insurance policy should be assigned by the American National Bank and Trust Company, as Trustee, to Mr. and Mrs. Cross and then Mr. Cross could make whatever assignments were necessary when he transferred the title to the real estate and improvements thereon.

CWD stated that Mrs. Erickson was getting very impatient and restive and desired the deal to be closed without further delay.

Mr. Wilbur stated that he was going to take over the property and make the final payment required by Mr. Cross and that he had to have certain papers executed by Mr. Cross to protect him. He stated that it would be impossible to close the deal Friday the 18th, as contemplated, but that he hoped to close it next Tuesday, the 22nd.

PLAINTIFF'S EXHIBIT 44 (Continued)

-2-

CWD stated that he would like to be able to tell Mrs. Erickson that it positively would be closed on that date. Mr. Wilbur assured CWD that as far as he could see there would be nothing to interfer with the closing and that he would bring the insurance policy with him so that the same could be prorated according to the terms of the agreement.

PLAINTIFF'S EXHIBIT 45

CALUMET 8-7474

Plaintiff's Exhibit / Defendant's Exhibit / Mem. Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No. BEFORE MINER, J.
Roy E. Feller - Official Court Reporter

Lasham Cartage Co.

2601 ARCHER AVENUE
CHICAGO 8

March 11, 1955

Mr. Hugh E. Cross
Carrollton, Illinois

Dear Sir:

Please furnish a quotation on equipment for use as a Tractor for delivery at Chicago, Ill. to be used in Pickup - Delivery operation. 5 units.

Rating: G.V.W. _____
G.C.W. 50,000 Lbs.

Cab: COE or Tilt

Wheelbase: _____ C.A. Dimension: 72"

Engine: Cu. In. Disp. Standard Clutch Heavy Duty

Transmission: 5 Speed Direct in 5th

Front Axle: 9,000 Lbs.

Rear Axle: 22,000 Lbs. Gear Ratio: 7.2-1

Brakes: Air Brakes

Tires: Front 1000x20 12 Ply Rear 1000x20 12Ply Dual

Wheels: Spoke with rims.

Extra Equipment: Front Turn Signals - Trailer Connections - 6 Way Tractor - Light Plug - Hand Control Valve - Limiting Valve Front Brakes Conversion Valve (Air to vacuum) - Low pressure Indicator - 50 gallon Safety Tank - Fresh Air Heater & Defroster - Dual Mirrors - Dual Wipers - 2 Front Towing Eyes - Break a Way Valve - I.C.C. Lighting - Grill Guard.

Please advise what delivery can be expected on this equipment. If this model is available in both COE and Tilt Cab, please furnish quotation on both models.

Kindly forward quotation to Mr. E. J. Arndt, Purchasing Agent, Lasham

PLAINTIFF'S EXHIBIT 45 (Continued)

Mr. Hugh E. Cross March 11, 1955

Cartage Co., 345 Hudson Street, New York 14, N.Y., allowing a copy of same to the undersigned.

Yours very truly,

LASALLE CARTAGE CO.

F. L. Fonaco
District Manager

FLF/ha

CALUMET 5-7474

PLAINTIFF'S EXHIBIT 46

Lasham Cartage Co.

2601 ARCHER AVENUE

CHICAGO 8

AUG [illegible] March 11, [illegible]

[illegible]
[illegible]rrollton, Illinois

Dear Sir:

Please [illegible] quotation on equipment for use as a [illegible] for delivery at [illegible], Ill. to be used in [illegible] delivery operation. 20 Units.

oil filter

Rating: [illegible] 29,000

Cab: [illegible] Cab FORWARD

Wheelbase: [illegible] Dimension: [illegible] 60"

Engine: [illegible] 264 [illegible] Std 11"

Transmission: [illegible] OK

Front Axle: [illegible] 4,700

Rear Axle: [illegible] 13,000 [illegible] 7.166-1

Brakes: [illegible] Booster

Tires: [illegible] 10 ply [illegible] 10 ply

[illegible]: [illegible]

Extra Equipment: [illegible] Ext. [illegible] Vacuum [illegible]

[illegible] Air [illegible]

[illegible] Safety

[illegible]

Please advise what delivery can be expected on this equipment. [illegible] Ill, [illegible] quotation [illegible]

[illegible] quotation [illegible]

PLAINTIFF'S EXHIBIT 46 (Continued)

-2 -

Mr. Hugh E. Cross March 11, 1955

Cartage Co., 345 Hudson Street, New York 14, N.Y., allowing a copy of same to the undersigned.

Yours very truly,

[illegible] CARTAGE CO.

F. [illegible] Monaco
District Manager

F[illegible]/ha

PLAINTIFF'S EXHIBIT 47

Calumet 5-7479

PURCHASE ORDERS

NO. 949 (o)

FROM
LASHUM CARTAGE CO.
2601 ARCHER AVE.
CHICAGO 8, ILLINOIS

DATE: 4/12/56

Plaintiff's Exhibit 47 Defendant's Exhibit
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

Carrollton Farm Supply

Carrollton, Illinois

Attention: Mr. Russ Cross, Jr.

26373

QUANTITY	DESCRIPTION	
	(NEW EQUIPMENT)	
2	International Tractors - Model RC-162 - W.B. 106" - C.A. 60"	$2450.00 each
5	International Tractors - Model CO-263 - W.B. 98" - C. A. 71-11/16"	$5850.00 each

APPROVED
APPROVE

LASHUM CARTAGE CO.

PER:

CALUMET 5-7474

PLAINTIFF'S EXHIBIT 48

Lasham Cartage Co.

2601 ARCHER AVENUE

CHICAGO 8

Division of
United States Gypsum Co.
300 Madison St.
New York 14, N.Y.

AUG 15 19[illegible]

April 12, 1945

Carrollton Farm Supply
Carrollton, Illinois

Attention: Mr. Hugh Cross, Jr.

Re: Our Purchase Order #949

Dear Sir:

As per our conference of yesterday, we submit our purchase order for the following tractor equipment (as per our conference of yesterday):

25 International Tractors - Model RC-162 - W.B. 106" - C.A. 60"
Engine - 264 cu. in.
Transmission - 4 speed Synchromesh
Front Axle - 4700# Heavy Duty Springs
Rear Axle - 13000# Heavy Duty Springs - Ratio 7.166
Tires - Front - 9.25x20 - 10 ply
Tires - Rear - 11.25 x20- 10 ply - Duals
Tire Preference - Goodyear
Hydrovac Booster
Semi-Trailer Connections
Hand Control Valve
6 Way Tractor Light Plug
Deluxe Oil Filter
Dual Wipers
Fresh Air Heater and Defroster
L.H. Extension Mirror
R.H. Extension Mirror
Double Faced Turn Signals
Vacuum Reserve Tank
Cab Marker Lights
Grille Guard
30 gal. Safety Tank (Right side)
Paint - Cab - #10 Int. Brown
Chassis and Wheels - Red

(Scrawled)

PLAINTIFF'S EXHIBIT 48 (Continued)

Mr. Hugh Cross, Jr.
Carrollton Farm Supply
Carrollton, Illinois

April 12, 1955

5 International Tractors - Model CO-205 - W.B. 99" - C.A. 71-11/16"
Tilt Cab
Engine - 406 cu. in.
Transmission - F520 - 5 Speed - Direct in 5th
Front Axle - FD 900
Rear Axle - 22000# - Ratio 7.166
Tires - Front - 1000x20 - 12 ply
Tires - Rear - 1000x20 - 12 ply - Duals
Tire Preference - Goodyear
Rims - 7.50V
Air Brakes
Semi-Trailer Connections - Parkaway Valve
Low Pressure Buzzer
Hand Control Valve
Conversion Valve Air to Vacuum
Front Wheel Limiting Valve
Fresh Air Heater
R.H. Extension Mirror
L.H. Extension Mirror
Dual Electric Wipers
2 Front Towing Eyes
6 Way Tractor Light Plug
Cab Marker Lights
50 gal. Safety Tank (Right side)
Paint - Cab - #10 Int. Green
Chassis and Wheels - Red
Double Faced Turn Signals
Delivered F.O.B., Fort Wayne, Indiana at invoice cost plus $150.00 per unit, as quoted in your letter of April 11th.

Kindly acknowledge, and advise earliest possible delivery date.

Yours very truly,

INTERNATIONAL HARVESTER CO.

( )

R. F. Bowman
Vice-President

RFB/ha

PLAINTIFF'S EXHIBIT 49

Plaintiffs Exhibit 49 Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division No.

BEFORE Minest, I.

Roy E. Fuller - Official Court Reporter

April 14, 1955

Lasham Cartage Co.
2601 Archer Ave.
Chicago 8, Illinois

12C 3x3

ATTENTION: R. G. Newman

Dear Mr. Newman:

Regarding our telephone conversation of April 13, 1955 with reference to price increase of Truck on your purchase order # 949, I confirm that the increase will be upwards to $100.00 per truck on the 162 Models, and upwards to [illegible].00 per truck on the 60-205 Models. These prices are list prices, they are also round figures prices, any variation downward will naturally be in your favor and passed along to you accordingly.

Trusting the above information is agreeable, I remain.

Your's truly,

CARROLLTON FARM SUPPLY COMPANY

Hugh

Hugh E. Cross

HEC:ek

PLAINTIFF'S EXHIBIT 50

June 8, 1955

Division of United States Freight Co.
345 Hudson Street
NewYork 14, New York

ATTENTION: Ray Newmann

Dear Mr. Newmann:

Enclosed you will find an exact copy of International Harvester Company Motor Truck Invoice. A tape has been run on their total to confirm the exact amount.

I am pleased to find that the Invoice Price is less than the price originally quoted.

I have called Chicago and told Mr. Monaco the invoice has been sent to you and upon receipt of your check, will release the trucks from Springfield, Ohio for your usage.

I am still working on the five (5) of CO-[illegible] and hope to be able to release these trucks when they are available realising your urgent need for them.

I will keep in touch with you and the Chicago office.

Thanking you again.

Sincerely yours,

CARROLLTON PAPER SUPPLY COMPANY

Hugh E. Cross

HEC:ok

PLAINTIFF'S EXHIBIT 51

UNION LEAGUE CLUB OF CHICAGO

HUGH W CROSS
No. 4270

Parmalee & 4

NAME Hugh W Cross

STREET ADDRESS 4924 2k Sumner Dr.

CITY Wash. STATE DC,

GUEST OF _____ No. _____

1119 CROSS HUGH W

ROOM	RATE	CLERK	BELLMAN
	800	SF	

NOTICE: The Club maintains a safe for the convenience of members and guests. However, any and all deposits made therein are made at the sole risk of depositing members or guests.

Plaintiff's Exhibit 51 Defendant's Exhibit — Identified — Received.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.

No. 56 C 323

Roy E. Fuller - Official Court Reporter

1955 JUN 3 PM 5 39

1955 JAN 31 PM 10 50

PLAINTIFF'S EXHIBIT 52

HUGH W CROSS Parmalle Ex 3

UNION LEAGUE CLUB OF CHICAGO

Nº 7075

NAME Hugh W Cross

STREET ADDRESS 4924 Ft Sumner Dr

CITY Wash STATE D.C.

GUEST OF _____ No. _____

1114 CROSS HUGH W.

ROOM	RATE	CLERK	BELLMAN
	7	JH	

NOTICE !

The Club maintains a safe for the convenience of members and guests. However, any and all deposits made therein are made at the sole risk of depositing members or guests.

1955 JUN 28 AM 8 04

1955 JUN 30 PM 4 52

PLAINTIFF'S EXHIBIT 53

July 8, 1955

Hon. Hugh W. Cross
4924 Ft. Sumner Dr
Washington 16, D.C.

Dear Mr. Cross:

We submit ~~a~~ enclosed contract for your approval.

Please let us know if it is satisfactory and we will obtain Miss Caldwell's signature.

Yours truly,

PLAINTIFF'S EXHIBIT 54

INTERSTATE COMMERCE COMMISSION
WASHINGTON

1103

July 10/55.
4924 34th. Sumner Dr.
Washington 16 D.C.

Dear Mr. Diver:

Enclosed are the 2 copies of the contract signed by Mrs Cross and myself. The check for $4500.00 I will mail within 10 Days.

You might say to Mrs. Erickson that we may want to inspect the premises during the summer, but that we would endeavor to let her know in advance.

Please treat this matter in confidence and withhold the use of my name.

Sincerely

Hugh W. Cross

PLAINTIFF'S EXHIBIT 55

ARTICLES OF AGREEMENT

HUGH W. CROSS and HELEN M. CROSS, his wife, agree to buy at the price of Thirty-eight Thousand and no/100 Dollars ($38,000.00), which includes the mortgage indebtedness hereinafter specified, the following described real estate in Lake County, Illinois:

> Lot 30 (except the West 52 feet thereof), Lot 31 and the West 52 feet of Lot 32 in Block 1 in H. M. Cornell Company's Addition to Briarwoods, being a Subdivision of Block 10 and Lots 1 to 21, both inclusive, in Block 24 in H. O. Stone and Company's Addition to Deerfield, in Sections 28 and 29, Township 43 North, Range 12, East of the 3rd P.M., also the South 65 feet of the East 130 feet of the West 516 feet of the North West quarter of the South East quarter of Section 28, Township 43 North, Range 12, East of the 3rd P.M., in Lake County, Illinois.

and MARGUERITE K. ERICKSON agrees to sell said premises for said price and to convey or cause to be conveyed to the buyers good title thereto by a good and sufficient deed with release of dower and homestead rights , subject only to:

1. Special Assessment West Skokie Drainage District Warrant No. 5303, County Court, Lake County, Illinois, for repairing and keeping in repair the West Skokie Drainage District ditch, confirmed October 15, 1952, for $12.00 each year on Lots 23 to 34 (as a tract), in Block 1 in Subdivision aforesaid, payable annually in one installment, that remains unpaid of record, which is a continuing annual assessment, the 1954 annual assessment and all prior assessments having been paid.

2. General taxes for the year 1955 and subsequent years.

3. Rights and easement of public utilities and restrictions, covenants and conditions as contained in the plat of said subdivision and certain deeds recorded in the Recorder's Office of Lake County, Illinois as Documents 428459, 283217, 755918, 245274, relating to location, cost, kind and character of buildings and use of premises.

4. Zoning and building laws or ordinances.

5. Possession to be given buyers on September 15, 1955.

- 1 -

PLAINTIFF'S EXHIBIT 55 (Continued)

5. Roads and highways, if any.

6. Principal indebtedness aggregating on the 1st day of July $22,729.90 represented by the note of the American National Bank and Trust Company of Chicago, a national banking association, as Trustee under Trust No. 8643, to the Chicago Title and Trust Company, an Illinois Corporation, payable monthly as therein stated, the balance being due July 1, 1968, with interest at the rate of 5 % and the covenants, conditions and agreements therein contained.

Water taxes, utility services, insurance premiums and accrued mortgage interest are to be adjusted prorata as of the date of the delivery of said Deed and the Insurance Policies shall be assigned to the buyers. General taxes for the year 1955 are to be prorated from January 1st to the date of delivery of the Deed, if the amount of such taxes is not then ascertainable, the prorating shall be on the basis of the amount of the most recent ascertainable taxes.

The buyers have paid the sum of Forty-five Hundred and no/100 Dollars ($4500.00) earnest money to be applied on the purchase price and it is understood and agreed that this sum of $4500.00 shall be used by the buyers to purchase the equity in said premises owned by Kenneth E. Erickson, husband of the seller, at the time of his death on November 9, 1954, and whose estate is now pending in the Probate Court of Lake County, Illinois as No. 21739, and said buyers agree to pay within five (5) days after title is shown to be good or is accepted by the buyers the balance of said purchase price over and above the mortgage indebtedness, then and there remaining unpaid, which said

PLAINTIFF'S EXHIBIT 55 (Continued)

mortgage indebtedness then and there existing the buyers assume and agree to pay as part of the purchase price hereof. Within 30 days from date hereof, seller shall deliver to buyers or their agent (which delivery may be made at office of Baird and Warner, 215 N. Dearborn Street, Chicago, Illinois) as evidence of title covering date hereof, showing record title in seller (or grantor) Owner's Guarantee Policy of Illinois Title Company in the amount of the purchase price or its customary preliminary report on title subject to the usual objections contained in such policies, though, if such report be furnished, seller shall deliver such guarantee policy when deed is delivered, but seller, on furnishing such report shall not be in default to furnish policy until ten days after demand therefor by buyers, such policy or report on title to be conclusive evidence of good title subject only to the exceptions therein stated.
If evidence of title furnished discloses any defect in title except matters to which this sale is subject by the terms hereof seller shall have sixty days, computed from delivery of evidence of title in which to cure all defects, to which this sale is not subject. If such defects in title be not cured within such sixty days buyers may terminate this contract or may at their election take the title as it then is (with right to deduct from purchase price liens of definite or ascertainable amount) on giving seller notice of such election and tendering performance. If no such notice be given or tender made within ten days after notice to buyers of seller's inability to cure such defects, this contract then shall be null and void. If this contract be

PLAINTIFF'S EXHIBIT 55 (Continued)

terminated except for buyer's default earnest money shall be returned.

If buyers defaults hereunder, then, at the option of seller, earnest money shall be forfeited as liquidated damages and this contract then shall be null and void.

If, prior to delivery of deed hereunder, the improvements on said premises shall be destroyed or materially damaged by fire or other casualty, this contract shall, at the option of buyers, become null and void. Payment of purchase price and delivery of deed shall be made at office of Baird and Warner, 215 N. Dearborn Street, Chicago, Illinois.

All notices and demands herein required shall be in writing. The mailing of a notice by registered mail to seller at the offices of Diver, Diver and Ridge, 216 Madison Street, Waukegan, Illinois, or to buyers at the offices of Baird and Warner, 215 N. Dearborn Street, Chicago, Illinois shall be sufficient service thereof, on date of mailing.

Seller agrees to pay a broker's commission of Nineteen Hundred and no/100 Dollars ($1900.00) to Baird and Warner.

Time is of the essence of this contract. The words "date hereof" mean date of delivery of this contract.

Dated this 11 day of July, A. D. 1955.

Executed in Duplicate:

Hugh M Cross

Helen M Cross

Marguerite K. Erickson

PLAINTIFF'S EXHIBIT 56

aug 5-aug 11 - out of Town
aug 20 - Sept 6 - out of Town

EXCLUSIVE LISTING

Date July 11-55

In Consideration of One Dollar ($1.00) receipt of which is hereby acknowledged, I or we constitute and appoint **W. C. & A. N. MILLER DEV. CO.** the exclusive agent for the sale of the real estate described on front of this card for a period of September 55 days from date hereof. I or we agree to pay **W. C. & A. N. MILLER DEV. CO.** the usual brokerage commission on any sale consummated during the period of this exclusive agreement, or on any sale consummated through the efforts of **W. C. & A. N. MILLER DEV. CO.** in advertising or otherwise offering the property for sale, said commission to be paid whether sale is made by **W. C. & A. N. MILLER DEV. CO.** myself or any broker or brokers. Except a reservation that if I sell to Harold DeVeau there will be no commission due the above agent on such sale

W. C. & A. N. MILLER DEVELOPMENT COMPANY

By J. R. Adams
Agent

Hugh W. Cross Owner
4924 Ft. Sumner Dr Address
Ad 2-6019 Telephone

Miller Ex 2A for id

4924 Ft. Sumner

LISTING CARD Trick lock on front.

EXCLUSIVE ☒ GENERAL ☐

EXPIRATION DATE LISTED 7/11/55 LISTER: Shaw

BLOCK NO. 6 SQ. NO. LOT NO. 17 LOT SIZE 110 x 142 SQ. FT.

STYLE Ranch CONSTRUCTION Frame & Brick Veneer

ROOF Asph. Tile YEAR BUILT 1953 INSULATED Yes STORM W. Yes SCREENS Yes W. STRIPPED Yes

GARAGE Built NO. CARS 2 HEAT Gas Fired HW HEAT COST $150 TAXES 46.12

FRONT PORCH Stone SIDE PORCH Slab REAR PORCH SLEEPING PORCH

FIRST FLOOR PLAN: L.R. D.R. 3 B.R. Den Tile Bath

SECOND FLOOR PLAN:

THIRD FLOOR PLAN:

BASEMENT PLAN: Game Room Fireplace Utility Small Lav

REMARKS: all all-season weather Heat Excellent condition

VACANT
KEY AT OFFICE
OCCUPIED
NAME AND TEL. NO. FOR APPOINTMENTS

If front door becomes stuck, we are authorized to break down or do anything to get at front.

Office { Mrs E-7460 Cap 7-19 Tom

Hugh W. Cross Ad 2-6019

EXISTING TRUST	INT.	HELD BY	PAY OFF POSSIBILITIES, ETC.
1ST 14790	4½	Prudential	142.40 yrs
2ND			37,000 11-11-55
CASH	COMMITTMENTS		SECOND TO POSSIBLE 22,500.00 AMB
	Owner 823.00		

ADDRESS AREA SALE PRICE BED R. BATH

4924 Ft. Sumner Dr. Sumner 24,750 4 3

VIA IO-LAREN

PLAINTIFF'S EXHIBIT 57

HUGH W. CROSS
[redacted]
4924 Ft. Sumner Dr.
Washington 16 D.C.

July 24/55

Mr. Clarence Diver
216 Madison St.
Waukegan, Ill.

Dear Mr. Diver:

Receipt is acknowledged of the contract and supplemental contract each signed by Mrs. Erickson. The supplemental contract I have sent to Mrs. Cross for signature. She is at our place at Charlevoix, Mich. It should reach you in a few days.

It is likely that Mrs. Cross and I will be in Chicago about August 7 to 10th. If so we would like to spend some time at the house that I bargained for so hurriedly. [illegible] Mrs. C. and ascertain if she will be there then.

I appreciate the valuable assistance you have rendered.

Sincerely,

Hugh W. Cross

PLAINTIFF'S EXHIBIT 58

10

MR & MRS HUGH W CROSS

UNION LEAGUE CLUB OF CHICAGO

Parmalee Et 5

No. 871

NAME Hugh W Cross & Mrs Cross

STREET ADDRESS 4924 W. Sumner Dr.

CITY Wash. STATE D. C.

GUEST OF _____ No. _____

1820 CROSS HUGH Mr & wife

ROOM	RATE	CLERK	BELLMAN
1	1400	DL	

NOTICE

The Club maintains a safe for the convenience of members and guests. However, any and all deposits made therein are made at the sole risk of depositing members or guests.

1955 AUG 11 AM 7 43

1955 AUG 7 PM 4 57

PLAINTIFF'S EXHIBIT 59

~~INTERSTATE COMMERCE COMMISSION~~
WASHINGTON

4924 St. Sumner Dr.
Wash 16 D.C.

HUGH W CROSS
COMMISSIONER

July 27/55

Dear Mr. Diver:

Enclosed is my check payable to you as attorney for $4500.00 covering the earnest money payment under the purchase contract entered into with Marguerite K. Erickson. While you letter did not request the payment, I deem it proper for you to have this.

Please either execute a receipt for this amount or advise by letter to that effect.

Sincerely,

Hugh W. Cross

Mr. Clarence W. Diver
216 Madison St.
Waukegan, Ill

PLAINTIFF'S EXHIBIT 60

Mr. Albert A. Wilbur
215 North Dearborn Street
Chicago, Illinois

Dear Mr. Wilbur:

In consideration of your paying out the money to fulfill the terms of the contract dated the 11th day of July, 1955 between Hugh W. Cross and Helen M. Cross, as the purchaser, and Marguerite K. Erickson, as the seller, on the property located at 320 Margate Terrace, Deerfield, Illinois, we hereby assign to you all of the rights, title and interest we may have in said agreement and give you full authorization in everything pertaining to the handling of the sale of this property. Witnessed our hands and seal this 18th day of November, 1955.

Hugh W. Cross (Seal)
Hugh W. Cross

Helen M. Cross (Seal)
Helen M. Cross

PLAINTIFF'S EXHIBIT 61

Mrs. Marguerite K. Erickson
c/o Diver, Diver and Ridge
216 Madison Street
Waukegan, Illinois

Dear Mrs. Erickson:

We hereby direct and authorize you to have the Bill of sale for the personal property as per our agreement of the 11th day of July, 1955 to be made direct to the LaSalle National Bank as Trustee under the provisions of trust agreement dated the 9th day of November, 1955 and known as trust number 18514. Witnessed our hands and seal this 18th day of November, 1955.

Hugh W. Cross (Seal)
Hugh W. Cross

Helen M. Cross (Seal)
Helen M. Cross

PLAINTIFF'S EXHIBIT 62

HUGH W. CROSS—CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

NOVEMBER 15, 1955

Printed for the use of the Committee on Government Operations

Plaintiffs Exhibit 62 Defendants Exhibit ( ) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

RECEIVED
AUG 15 1960
AT O'CLOCK
ROY H. JOHNSON

UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON : 1956

70850

PLAINTIFF'S EXHIBIT 62 (Continued)

COMMITTEE ON GOVERNMENT OPERATIONS

JOHN L. McCLELLAN, Arkansas, *Chairman*

HENRY M. JACKSON, Washington	JOSEPH R. McCARTHY, Wisconsin
JOHN F. KENNEDY, Massachusetts	KARL E. MUNDT, South Dakota
STUART SYMINGTON, Missouri	MARGARET CHASE SMITH, Maine
SAMUEL J. ERVIN, JR., North Carolina	NORRIS COTTON, New Hampshire
HUBERT H. HUMPHREY, Minnesota	GEORGE H. BENDER, Ohio
STROM THURMOND, South Carolina	THOMAS E. MARTIN, Iowa

WALTER L. REYNOLDS, *Chief Clerk*

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

JOHN L. McCLELLAN, Arkansas, *Chairman*

HENRY M. JACKSON, Washington	JOSEPH R. McCARTHY, Wisconsin
STUART SYMINGTON, Missouri	KARL E. MUNDT, South Dakota
SAMUEL J. ERVIN, JR., North Carolina	GEORGE H. BENDER, Ohio

ROBERT F. KENNEDY, *Chief Counsel*
DONALD F. O'DONNELL, *Assistant Chief Counsel*
JAMES N. JULIANA, *Chief Counsel to the Minority*

PLAINTIFF'S EXHIBIT 62 (Continued)

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Johnston, Wayne A	17
Keeshin, John L	27
O'Donnell, Donald F	24

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2. Memorandum prepared by R. A. Trovillion, vice president, Illinois Central Railroad, for Wayne A. Johnston, president, Illinois Central Railroad, June 3, 1955	21	82
3. Memorandum from R. A. Trovillion, vice president, Illinois Central Railroad, to Wayne A. Johnston, president, Illinois Central Railroad, April 27, 1954	21	82
4. Memorandum from R. A. Trovillion, vice president, Illinois Central Railroad, June 13, 1955	21	83

PLAINTIFF'S EXHIBIT 62 (Continued)

HUGH W. CROSS, CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION

(On January 9, 1956, Senators John L. McClellan (chairman), Henry M. Jackson, Stuart Symington, and Sam J. Ervin, Jr., voted to make this executive testimony of November 15, 1955, public. Senators Joseph R. McCarthy, Karl E. Mundt, and George H. Bender voted against it being made public.)

TUESDAY, NOVEMBER 15, 1955

UNITED STATES SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to Senate Resolution 41, agreed to February 21, 1955, in room 357 of the Senate Office Building, Senator John L. McClellan (chairman of the subcommittee) presiding.

Present: Senators John L. McClellan, Democrat, Arkansas; Henry M. Jackson, Democrat, Washington; Sam J. Ervin, Jr., Democrat, North Carolina; Joseph R. McCarthy, Republican, Wisconsin.

Also present: Robert F. Kennedy, chief counsel to the subcommittee; Donald F. O'Donnell, chief assistant counsel; James N. Juliana, chief counsel to the minority; Paul E. Kamerick, Assistant Counsel; J. Fred McClerkin, legal research analyst; Ruth Y. Watt, chief clerk.

The CHAIRMAN. The subcommittee will come to order, and the Chair will make this preliminary statement for the record.

(The Senators present at the convening of the session were Senators McClellan, Ervin, and Jackson.)

The CHAIRMAN. There came to this committee information of certain possible actions on the part of Mr. Hugh W. Cross, Chairman of the Interstate Commerce Commission. The information was of such a nature as to arrest the attention of this committee, and a preliminary investigation by the staff of the reported facts has been made. That preliminary investigation has led to conferences between the chairman and Mr. Cross and other parties of interest. That information also has indicated to the chairman that at least executive hearings should be held to get the facts on record under oath.

It is not easy to get the whole truth in a matter by the staff going out and interrogating witnesses. Sometimes it is difficult even to get the whole truth on record under oath. But under the facts as they have been developed, or at least the information that has been developed, I think it is the duty of this committee to pursue it for two purposes:

PLAINTIFF'S EXHIBIT 62 (Continued)

One is to find out whether any act or actions of wrongdoing have been committed. First, if so, the committee will take cognizance of it and be governed accordingly.

If the committee finds, secondly, that the allegations or the information upon which this investigation is premised is not substantiated by the facts, then the committee should so report in fairness and in all deference to those who may be involved.

I reported to the committee yesterday afternoon in executive session, and the staff made its report to the committee of information we have. On that basis, the committee unanimously agreed to hold executive sessions today. That is the purpose of this meeting.

We have Mr. Paul Feucht, the first witness we will hear from. Has any member of the committee any comment, before we proceed to hear the testimony?

All right, Mr. Feucht, will you stand and be sworn please sir?

Do you solemnly swear that the evidence you shall give before this Senate investigating subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FEUCHT. I do.

TESTIMONY OF PAUL E. FEUCHT

The CHAIRMAN. Be seated, please, sir.

Mr. Reporter, let your record show that the opening statement of the Chair was made in the present of the witness.

Mr. Feucht, I am sure that you already know your rights as a citizen and as a witness. You are entitled to have counsel represent you if you so desire.

Mr. FEUCHT. I don't care to have any counsel.

The CHAIRMAN. Thank you very much. Then you are ready to proceed? You do not desire counsel?

Mr. FEUCHT. That is right.

The CHAIRMAN. All right, Mr. Feucht.

Will you state your name and your occupation and residence, and give us your background, please?

Mr. FEUCHT. Paul E. Feucht, president of the Chicago and Northwestern Railway Co., with office address at 400 West Madison Street, Chicago, Ill.

The CHAIRMAN. How long have you been president of this company?

Mr. FEUCHT. Since January 1, 1953.

The CHAIRMAN. Does your railroad service the Chicago area?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. How many railroads serve that area, if you recall?

Mr. FEUCHT. As I recall, 26 trunklines, and about 14 short lines, if my memory serves me correctly; something like that.

The CHAIRMAN. Do they all have the same terminal in Chicago?

Mr. FEUCHT. Oh no. There are quite a number of different terminals.

The CHAIRMAN. And what are the arrangements for transferring passengers and luggage from one terminal to another? What arrangements has the railroad made about that?

Mr. FEUCHT. Well, the railroads have a transfer service that handles passengers and baggage between the various terminals, like between our station, the Northwestern Station, and Union Station,

PLAINTIFF'S EXHIBIT 62 (Continued)

and La Salle Street Station, and Dearborn, Illinois Central terminal, and we have had that for quite a number of years.

The CHAIRMAN. How is that handled? Is it by the railroads themselves or by arranging with some transfer service, or some other agency to do that?

Mr. FEUCHT. It is handled by a transfer service.

The CHAIRMAN. It is not a transfer service; not owned or controlled by the railroads?

Mr. FEUCHT. That is correct.

The CHAIRMAN. What procedure is taken by the railroads to procure that kind of service? Does each railroad make a separate contract with the transfer company? Just give us the story about how it is handled.

Mr. FEUCHT. Well, for years the transfer service has been handled by Parmalee with an arrangement made by all of the railroads in Chicago on the basis of so much for handling each passenger and his baggage. I cannot tell you what the details of the handling charges are at all. That is not in my jurisdiction. That is handled by the passenger people on my railroad, in conjunction with the passenger people on the other railroads.

The CHAIRMAN. At this stage of the proceedings, that information would not necessarily be pertinent to the subject under inquiry, and if it should become pertinent later, we can secure that information from you, or from someone else who has the facts. So you may proceed.

Mr. FEUCHT. That is about the size of it.

The CHAIRMAN. Do the railroads have a committee representing each railroad, and possibly a subcommittee that makes the contracts and makes the arrangements for all of the railroads for this transfer service?

Mr. FEUCHT. Yes; that is done by the Western Passenger Association.

The CHAIRMAN. The Western Passenger Association?

Mr. FEUCHT. Yes. That is headed by Mr. Padrick, I think it is, who is chairman of the Western Passenger Association.

The CHAIRMAN. And that association is composed of railroads as members?

Mr. FEUCHT. Of all the railroads in Chicago; yes, sir.

The CHAIRMAN. Of all the railroads serving Chicago?

Mr. FEUCHT. That is right; that have any passenger business.

The CHAIRMAN. So you have this Western Railroad Association, representing all of the railroads that handle passengers?

Mr. FEUCHT. That is correct.

The CHAIRMAN. Now, that association, does each railroad have representation in this association?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. And then does the association have an executive committee or some committee that acts for it in making the arrangements for the transfer of passengers and luggage?

Mr. FEUCHT. To the best of my knowledge, no. It is handled by the entire committee.

The CHAIRMAN. How many are on that committee?

Mr. FEUCHT. I cannot answer that. It is composed—I know so far as we are concerned, we have two members on the committee from our railroad.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. You have representation, or your railroad has representation on that committee?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. Will you advise us who they are? Do you remember the names?

Mr. FEUCHT. Mr. Bob Brennan, Robert Brennan, passenger traffic manager, and, I think, Mr. Quackenbush, assistant passenger traffic manager.

The CHAIRMAN. They serve as your representatives, representatives of your company?

Mr. FEUCHT. That is correct.

The CHAIRMAN. They as such participate in the making of a contract for the benefit of all of the railroads for this transfer service?

Mr. FEUCHT. That is correct.

The CHAIRMAN. Do you know how long the Parmalee interests performed this service for the railroads?

Mr. FEUCHT. I cannot tell you how long, but it has been a long while.

The CHAIRMAN. Something like a century?

Mr. FEUCHT. I wouldn't say that long.

The CHAIRMAN. You don't think it has been that long?

Senator ERVIN. Your memory wouldn't run back that far, would it?

Mr. FEUCHT. No.

The CHAIRMAN. But for many years?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. I think our information, just for your information, shows that the same interest has been performing this service for more than 100 years, 102 years to be exact.

Mr. FEUCHT. I was going to say perhaps back to 1900, at least, but I would not know from actual contact.

The CHAIRMAN. That is not altogether important, but the point is that they had been serving for a long time, and for some reason, or I might ask you if know whether prior to 1954, prior to that time the contract with the Parmalle interests had been negotiated or been renewed from time to time on some negotiated basis, rather than to receive open bids or to receive bids from different industry people to perform this service. Do you know?

Mr. FEUCHT. I only know to this extent, that that has been given me as a matter of information by my man on the committee, that that has been negotiated from time to time.

The CHAIRMAN. Renegotiated with the Parmalee interests?

Mr. FEUCHT. That is right.

The CHAIRMAN. Is it of your knowledge that last year, or is it your information, that last year some time it was decided instead of renewing the contract or negotiating a new contract with the Parmalee interests, that the association representing the railroads would undertake to provide the service on the basis of receiving bids from different interests to perform the service?

Mr. FEUCHT. I know that definitely.

The CHAIRMAN. You know that definitely?

Mr. FEUCHT. Yes.

The CHAIRMAN. Beyond that now, did you know that that course was pursued? You also know that?

Mr. FEUCHT. That is correct.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. And in the course of receiving bids, do you remember when bids were first received or advertised for?

Mr. FEUCHT. No, I do not. All I recall of the thing was that back in September or October of 1954, I think, I told Mr. Brennan when he spoke to me about going out for these bids, "I think it is a good thing to get some competition in here, and see if we cannot get this work done for perhaps a cheaper price for the railroads. This price has just gone sky high."

The CHAIRMAN. Well, there was a general feeling among the railroad executives that some better arrangements might be made if bids were received rather than the contract renegotiated?

Mr. FEUCHT. I don't know about the other executives; I know that was my viewpoint.

The CHAIRMAN. You so advised the representatives of your company?

Mr. FEUCHT. That is right.

The CHAIRMAN. Do you know when the bids were submitted?

Mr. FEUCHT. No, sir, I do not.

Mr. KENNEDY. The records show that the Parmalee submitted a bid on May 20, 1955, Mr. Chairman, and then Keeshin shortly after, and then Parmalee as I understand it, amended their initial bid.

The CHAIRMAN. I was trying to get at the dates. It was some time this year, and the information we have is that it was May of 1955. Would that be about correct?

Mr. FEUCHT. That would be about correct. I was thinking you were talking back in 1954 yet, and I didn't know you had gotten up to 1955.

The CHAIRMAN. The chairman may have been wrong about that. I understand along about 1954 there was a decision made to arrange for bids rather than to enter into negotiations, exclusive negotiations with the Parmalee interests.

Mr. FEUCHT. That is correct. That is what I had reference to.

The CHAIRMAN. And then in May of 1955, along in that time, bids were received?

Mr. FEUCHT. That is about correct, yes.

The CHAIRMAN. Now, after bids were received on this contract—or first, may I ask you, is that service, that transfer service that we have been discussing in Chicago, is that interstate or intrastate, do you know?

Mr. FEUCHT. I do not know, definitely, but I would judge it is interstate.

The CHAIRMAN. You would judge it is interstate?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. But you do not know?

Mr. FEUCHT. No.

The CHAIRMAN. If it is interstate, then of course the Interstate Commerce Commission would have jurisdiction over it.

Mr. FEUCHT. I wouldn't think so.

The CHAIRMAN. If it is interstate, they are bound to have direct jurisdiction over it? If you don't know, you can say you don't know.

Mr. FEUCHT. I don't know.

Senator JACKSON. As a matter of fact, the transfer that takes place all occurs within the city of Chicago, does it not?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. FEUCHT. That is right, but there is a fine distinction of the fact that the passengers have been hauled across country through several States.

Senator JACKSON. They are moving in interstate commerce, and the question is whether this affects interstate commerce. It is a broken circuit in the interstate traffic of people, is it not?

Mr. FEUCHT. Well, that is correct.

The CHAIRMAN. We are getting into the technical aspects of it, but I am just trying to lay the foundation in the record here of whether if it is interstate, the Interstate Commerce Commission would have direct jurisdiction over the transaction, or over the service. If it is purely intrastate, it would have no jurisdiction over it, and therefore would not be called on to approve or disapprove any contract or rates that might be involved. We can clear that up in the record later.

Mr. KENNEDY. May I say, Mr. Chairman, that the Interstate Commerce Commission has ruled that this is intrastate, but that ruling has been appealed by other interested groups. That is how the situation rests at this time.

The CHAIRMAN. We can show what the facts are.

Mr. FEUCHT. I might state that there are some differences of opinion between the executives in Chicago.

The CHAIRMAN. There is a controversy at present as to whether it is interstate or intrastate?

Mr. FEUCHT. That is right. So far as I am concerned, I will let the lawyers handle that question.

Senator JACKSON. We can say this, without any question, that the Interstate Commerce Commission has refused to assume jurisdiction, and I take it that that is correct.

Mr. KENNEDY. That is the present situation.

Senator JACKSON. It is for the courts to finally say.

The CHAIRMAN. That is the present position of the Interstate Commerce Commission. We will move along, then.

In the course of this, may I ask you first, are you personally acquainted with members of the Interstate Commerce Commission?

Mr. FEUCHT. Yes, I know 2 or 3 of them.

The CHAIRMAN. Will you name those whom you know? I will ask you then the specific question—there is no use to refer to the others—Are you acquainted with Mr. Hugh Cross, the Chairman of the Commission?

Mr. FEUCHT. I am, yes, sir.

The CHAIRMAN. How long have you been acquainted with him?

Mr. FEUCHT. Well, I would judge 5 or 6 years, somewhere along in that neighborhood.

The CHAIRMAN. What is the extent of that acquaintance?

Mr. FEUCHT. Just a passing acquaintance, like being introduced to him and knowing that he is a member of the Commission.

The CHAIRMAN. Have you had occasion to discuss official or business affairs with him, under the jurisdiction of the Commission?

Mr. FEUCHT. No; no, sir.

The CHAIRMAN. You have never discussed with him any matter pending before the Commission? You have never had occasion to do that?

Mr. FEUCHT. No, sir.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. Then your acquaintance with him has been more or less casual?

Mr. FEUCHT. That is right.

The CHAIRMAN. But you have known him for some 5 or 6 years?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. Did you know him prior to the time he became a member of the Commission?

Mr. FEUCHT. No, I did not.

The CHAIRMAN. Your acquaintance with him has been since, or some time since he became a member?

Mr. FEUCHT. In fact, it has been around 1950, I think the first time that I met Mr. Cross. That was at a little luncheon party in Chicago.

The CHAIRMAN. Well, have you had any telephone conversations with Mr. Cross or any personal conversations with him at any time since this transaction began, receiving bids for this particular contract in the transfer service in Chicago?

Mr. FEUCHT. The only conversation I had with him was the day I made that memorandum, I think it was May 13 or the 14th.

Mr. KENNEDY. May 13, I think.

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. Of 1955?

Mr. FEUCHT. That is right.

The CHAIRMAN. Where were you at the time that you had that conversation?

Mr. FEUCHT. In my office.

The CHAIRMAN. In Chicago?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. Did you see Mr. Cross in person that day?

Mr. FEUCHT. No, sir, it was purely a telephone conversation.

The CHAIRMAN. A long distance telephone conversation?

Mr. FEUCHT. That I don't recall. I am under the impression, although I wouldn't swear to this, I am under the impression that he called me from the Union League Club in Chicago.

The CHAIRMAN. The Union League Club of Chicago?

Mr. FEUCHT. But I am not positive.

The CHAIRMAN. You do not recall now whether it was a long distance telephone conversation or a local phone conversation?

Mr. FEUCHT. No.

The CHAIRMAN. Do you recall the time of day that you received this call?

Mr. FEUCHT. It was along in the afternoon, I think my memorandum says 4:15, doesn't it? Perhaps I had better look at the memorandum.

Mr. KENNEDY. Yes, it does say 4:15.

The CHAIRMAN. To refresh your memory, I will ask you if you cannot recall that the call was made by Mr. Cross from Washington, and from his home here in Washington, and that it was a long distance call.

Mr. FEUCHT. No, I cannot recall. I have been under the impression right along that it was from the Union League Club in Chicago. I wouldn't state positively.

The CHAIRMAN. May I ask you this: Did he call you at any other time on that day, May 13?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. FEUCHT. No.

The CHAIRMAN. And if the telephone records show that on May 13 at 4:15 p. m., here in Washington, Mr. Cross called you from his home here, long distance, and talked to you at that time, would you say those records—you would assume those records were correct?

Mr. FEUCHT. I would assume they are correct, yes.

The CHAIRMAN. At any rate, you had no other call from him on that date or that you can recall?

Mr. FEUCHT. No, sir.

The CHAIRMAN. So that the telephone records then would help to establish the facts, I would assume.

Mr. FEUCHT. I would assume so, because I don't recall it at all.

The CHAIRMAN. How long a time did he talk to you when he called you that day?

Mr. FEUCHT. I imagine possibly not longer than 10 minutes.

The CHAIRMAN. Had you had any previous long distance calls or telephone calls from Mr. Cross any time before that?

Mr. FEUCHT. I don't recall of any.

The CHAIRMAN. You don't recall of any?

Mr. FEUCHT. No, sir.

The CHAIRMAN. So far as you know, this is the first time that he had ever telephoned you, regarding anything?

Mr. FEUCHT. To the best of my recollection, yes.

The CHAIRMAN. What was the subject of the conversation, Mr. Feucht? What did he call you about, on that particular day? I understood you to say you can't recall that he had previously called you?

Mr. FEUCHT. No.

The CHAIRMAN. Just relate to the committee what occurred?

Mr. FEUCHT. He called and said that he was interested in seeing that Keeshin would get this contract.

The CHAIRMAN. His bid was then pending for this contract, to do this service for the railroads, this transfer service?

Mr. FEUCHT. That I don't know, because I was not in the details, although I knew that there were 2 or 3 operators ready to submit a bid. At this particular time, I had not gotten into any details of the bids at all. That was being handled entirely by my passenger people.

The CHAIRMAN. And you do not know whether the bids had already been submitted or that this was about the time or just before Keeshin submitted his bid?

Mr. FEUCHT. No, sir, I don't know.

The CHAIRMAN. Of course, the records will reveal that, but from your own knowledge, you don't know?

Mr. FEUCHT. I do not know of my own knowledge.

The CHAIRMAN. All right, proceed.

Mr. FEUCHT. He called me and told me that he was interested in getting this or seeing that Keeshin got this contract, and he quoted some figures which I wrote down in a little penciled note on a pad and I told him that as far as I was concerned I would be very happy to look at it and pass the information on to my people who were handling it, but that each contract had to stand on its own feet, and if Keeshin's bid was the best bid we could get and they could perform the service and they were financially responsible, I would be very glad to take a look at it.

PLAINTIFF'S EXHIBIT 62 (Continued)

But from an economic standpoint, each bid had to stand on its own feet.

The CHAIRMAN. Mr. Feucht, did he amplify or go into any explanation of the nature of his interest in seeing that Keeshin got the contract?

Mr. FEUCHT. No, and I was quite puzzled as to why I got the call.

The CHAIRMAN. You were puzzled?

Mr. FEUCHT. Yes.

The CHAIRMAN. You mean that you had not anticipated such a call?

Mr. FEUCHT. No, I had not.

The CHAIRMAN. You also were concerned about the propriety of such a call?

Mr. FEUCHT. I didn't give it a second thought, at that time. I thought about it afterward a little bit.

The CHAIRMAN. What did you think about it afterward?

Mr. FEUCHT. I just thought it was kind of funny that someone like that would call me about this contract.

The CHAIRMAN. Your railroad does have business before the Interstate Commerce Commission, and it has petitions pending there at different times?

Mr. FEUCHT. Oh yes.

The CHAIRMAN. And the Interstate Commerce Commission has jurisdiction over the railroad of which you are president?

Mr. FEUCHT. That is right.

The CHAIRMAN. Was that call, the nature of it, you regarded as something unusual, as not having occurred before during the time you have been president of a railroad?

Mr. FEUCHT. Yes, it was.

The CHAIRMAN. At the moment, you say that you gave it no thought?

Mr. FEUCHT. At the moment I didn't give it much thought.

The CHAIRMAN. How soon after the telephone conversation did you begin to give it some thought?

Mr. FEUCHT. That is kind of hard to say. I imagine maybe 15 or 30 minutes afterward, when I got to talking to my man on the committee, and I made this memorandum and passed it to him, I said "Here is what Hugh Cross gave me over the telephone, and I don't know what interest he has in this thing, but take it for what is is worth."

The CHAIRMAN. You did, immediately after the call then, call in your representative on the Western Railroad Association?

Mr. FEUCHT. I did.

The CHAIRMAN. The man who was representing your company in the making of the contract for this service. You called your representative in and talked to him about it?

Mr. FEUCHT. I did.

The CHAIRMAN. Had you made the memorandum prior to the time you called him in?

Mr. FEUCHT. I did.

The CHAIRMAN. And you called him in the same day, the same afternoon?

Mr. FEUCHT. That is right.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. And gave him the memorandum and discussed it with him?

Mr. FEUCHT. Well, I don't know as I discussed it with him, and I just said "Here is a memorandum of my conversation with Hugh Cross, and it has some figures in it, and I put it down here so that I would not be misquoting anybody."

The CHAIRMAN. Did he read it at that time?

Mr. FEUCHT. He took it with him.

The CHAIRMAN. He didn't comment on it there, and he didn't read it there?

Mr. FEUCHT. No.

The CHAIRMAN. Do you have the original memorandum, Mr. Feucht, that you made at that time?

Mr. FEUCHT. I do.

The CHAIRMAN. How many minutes would you say had elapsed from the time of the telephone conversation ended until you dictated this, and I assume you dictated the memorandum?

Mr. FEUCHT. I dictated it within about 5 or 10 minutes after the telephone conversation was over with.

The CHAIRMAN. Do you have the original there? Will you read the original into the record at this point?

Mr. FEUCHT. "Memorandum of my conversation with Hugh Cross, Commissioner, Interstate Commerce Commission, at 4:15 p. m., Friday, May 13, 1955:

Hugh Cross stated that he was very much interested in seeing that J. L. Keeshin got the new contract with the railroads here in Chicago to handle baggage and people between the various stations. He understands the contract expires July 1st and there are three bids for the new contract—Willett, Parmalee, and Keeshin.

The bid Keeshin has proposed is $1.20 which is 2 cents lower than what we are now paying. In other words, we are paying $1.22. For every 5 cents an hour wage increase they will only increase 1 cent an hour but they will not go higher in 3 years than 3 cents even though the wage increase might be higher than 3 cents an hour. Parmalee came down and met the $1.20 but there are some jokers in their proposal in that their contract states that for every 1 percent decrease in receipts there will be a 1-cent raise in tickets, which clause is not in Keeshin's bid.

In addition, Keeshin offers eight passenger station wagons, heated in the wintertime and air-conditioned in the summer, they would put any suggested name on them the railroads decide upon, they would handle baggage every hour on the hour between the various stations, and they would have representation here in Chicago as against the absentee representation by Parmalee.

He also stated that Keeshin's proposal was backed up by the First National Bank and they would get new equipment every 3 or 5 years (I am not positive but I believe he said every 3 years).

The CHAIRMAN. Now, may I inquire if you dictated that memorandum some 5 or 10 minutes after the telephone conversation with Mr. Cross, based on notes you made on a pad at the time that you were talking to him?

Mr. FEUCHT. Yes, that is correct.

The CHAIRMAN. And these figures and provisions of the different proposals were information that Mr. Cross gave you in that telephone conversation?

Mr. FEUCHT. That is correct.

The CHAIRMAN. You did not have that knowledge yourself prior to the telephone conversation?

Mr. FEUCHT. I did not.

The CHAIRMAN. Then I may ask you this: Subsequently, did you find out that the quotes with respect to figures and general quotes

PLAINTIFF'S EXHIBIT 62 (Continued)

with respect to provisions in the contract were substantially correct Mr. Cross gave them to you at that time?

Mr. FEUCHT. Yes, I did.

The CHAIRMAN. Then, Mr. Cross is bound to have known before he placed that telephone call to you, or known generally at least, and specifically in some respects, what the two different proposals contained. That is the proposal of Parmalee and also the proposal of Keeshin?

Mr. FEUCHT. I would assume so, because he knew more about it than I did.

The CHAIRMAN. He had more detailed information about the proposals than you?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. And he gave that information to you with respect to the two proposals?

Mr. FEUCHT. That is correct.

The CHAIRMAN. And the information he gave you was somewhat in the nature of an argument in favor of Keeshin, was it not?

Mr. FEUCHT. That is correct.

The CHAIRMAN. I note that our records with respect to the telephone call shows that it was placed here at 5:10 p. m. That would be what time in Chicago?

Mr. FEUCHT. It would be 4:10.

The CHAIRMAN. If your records show it is 4:15, and then the time is synchronized.

Mr. FEUCHT. It is very close, yes. I wouldn't know anything about that. My watch might have been a little fast.

The CHAIRMAN. Might I ask you this: Subsequently did Mr. Keesbin or his interests receive the contract for this service?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. Do you recall the name of the company that he represents that received the contract?

Mr. FEUCHT. The name of the company?

The CHAIRMAN. Yes, under what corporate name?

Mr. FEUCHT. Railroad Transfer Co. I believe is the correct name.

The CHAIRMAN. Do you know whether Mr. Keeshin organized that company for the specific purpose of bidding on this contract?

Mr. FEUCHT. I think he did. I am not sure.

The CHAIRMAN. It is Railroad Transfer Service, Inc., is that correct?

Mr. FEUCHT. That is correct, yes.

The CHAIRMAN. Do you know whether Mr. Cross, or have you any information as to whether Mr. Cross contacted other railroad officials regarding this matter?

Mr. FEUCHT. I have not.

The CHAIRMAN. You have no information as to that?

Mr. FEUCHT. No, sir.

The CHAIRMAN. As to which of the other railroads he may have contacted?

Mr. FEUCHT. I was having troubles of my own at that time, and I didn't pay too much attention to this whole thing.

The CHAIRMAN. Did you at that time have information or had you heard that Mr. Cross' interest was that he contemplated becoming associated with this corporation of Mr. Keeshin's?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. FEUCHT. I never heard that, to the best of my knowledge.
The CHAIRMAN. At any time?
Mr. FEUCHT. No, sir.
The CHAIRMAN. You never heard it at any time during the course of the consideration of this contract, of these bids?
Mr. FEUCHT. No, I did not.
The CHAIRMAN. Did you inquire of him, in that telephone conversation; of what his interest was?
Mr. FEUCHT. No, I did not.
The CHAIRMAN. Did it not strike you as of interest to you to know why he wanted this contract handled that way?
Mr. FEUCHT. As I stated before, I was having a little difficulty myself, and I had my mind on other things, outside of this conversation that were more immediate to me.
The CHAIRMAN. Were you having some difficulty with the Interstate Commerce Commission, and your railroad at that time?
Mr. FEUCHT. No, I was having a little labor difficulty at that time, and I was more wrapped up in that than I was in this conversation.
The CHAIRMAN. I am not trying to get into anything that is extraneous, and I just asked the direct question, of whether you had any matters pending in your company before the Interstate Commerce Commission at that time.
Mr. FEUCHT. No, we did not.
The CHAIRMAN. You had none pending at that time?
Mr. FEUCHT. No, sir.
The CHAIRMAN. Have you had any since?
Mr. FEUCHT. No, except what all of the railroads have, was making permanent the Ex parte 175 increase.
The CHAIRMAN. That is something of general interest to all of the railroads.
Mr. FEUCHT. Yes, that is something of general interest to all of the railroads.
The CHAIRMAN. Mr. Counsel, do you have anything further?
Mr. KENNEDY. Was that Ex parte 175 discussed at all with Mr. Cross?
Mr. FEUCHT. No.
The CHAIRMAN. Are there any members of the committee who wish to ask any questions?
Senator JACKSON. Mr. Feucht, I take it that the memorandum that you have read into the record represents the best of your ability the information relayed to you over the telephone by Mr. Cross?
Mr. FEUCHT. That is correct.
Senator JACKSON. It does not contain your opinion, it is merely a statement of what Mr. Cross told you, to the best of your ability?
Mr. FEUCHT. That is right, and may I state this, to clarify the record, that the only reason I made the record was because he quoted rates in here, and I didn't want to be misquoted on rates.
Senator JACKSON. What I am getting at is that in reading this memorandum we have the right to believe that this is the information that he conveyed to you, and it is not your opinion.
Mr. FEUCHT. It is not my opinion.
Senator JACKSON. That is what I am getting at.
Mr. FEUCHT. And it is briefed down as brief as I could get it, and just contains the salient facts.

PLAINTIFF'S EXHIBIT 62 (Continued)

Senator JACKSON. As a matter of fact, the details in here as to amount per hour, and these figures and so on was totally unknown to you, I take it, until he had given you the information?

Mr. FEUCHT. That is correct.

Senator JACKSON. Were you a bit surprised by his calling you?

Mr. FEUCHT. I was, yes. Frankly.

Senator JACKSON. This matter had never been to your knowledge under the Interstate Commerce Commission in any manner or shape or form?

Mr. FEUCHT. Sir, what is that?

Senator JACKSON. This matter had never been an item under the jurisdiction of the Interstate Commerce Commission?

Mr. FEUCHT. No.

Senator JACKSON. Has anyone or has Mr. Cross talked to you since this time?

Mr. FEUCHT. He has not.

Senator JACKSON. Has he talked to you either directly or indirectly through his attorney, or individuals?

Mr. FEUCHT. No.

Senator JACKSON. There has been no discussion at all?

Mr. FEUCHT. There hasn't been a bit of discussion since this telephone call.

Senator JACKSON. And you haven't discussed your testimony, that you were going to give here, with anyone other than the staff of the committee?

Mr. FEUCHT. No.

Senator JACKSON. With anyone at all?

Mr. FEUCHT. No, sir.

Senator JACKSON. I think Mr. Chairman, it would be well to advise him that he is not to divulge his testimony. This is in executive session, and it should not be divulged to anyone either directly or indirectly, the nature and substance of it,

The CHAIRMAN. Yes.

Senator ERVIN. As I understand, you made a record of the facts and information given you by Mr. Cross in this phone conversation, so that it might receive such consideration from the representative of your railroad on the Western Passenger Association Committee as he deemed proper?

Mr. FEUCHT. That is correct.

Senator ERVIN. That is all.

The CHAIRMAN. I think the record shows it, but what again, is the name of your representative to whom you delivered this memorandum?

Mr. FEUCHT. Bob Brennan.

The CHAIRMAN. Where is he now?

Mr. FEUCHT. He is in Chicago.

The CHAIRMAN. Is he still with your railroad?

Mr. FEUCHT. Yes; passenger traffic manager.

The CHAIRMAN. He would be available?

Mr. FEUCHT. Yes; he would be available.

The CHAIRMAN. If it is desired, I assume.

Mr. FEUCHT. That is right.

Mr. JULIANA. Sir, did your railroad vote to give this contract to Keeshin, to the Keeshin Co.?

Mr. FEUCHT. Yes.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. JULIANA. Do you know whether or not the facts as you relate them in your memorandum here is any way influenced your representative on the Commission or on the Board?

Mr. FEUCHT. No; as a matter of fact when I gave this memorandum, as I think I stated before, about Brennan, and I said "Here is what I got on the telephone from Hugh Cross, but I want you to distinctly understand I don't want this to influence your judgment. It has to stand on its own bottom."

Mr. JULIANA. Did you discuss this memorandum with Mr. Brennan following his decision?

Mr. FEUCHT. Following whose decision?

Mr. JULIANA. Mr. Brenann's decision to vote in favor of Keeshin.

Mr. FEUCHT. No; I discussed it the next day with him, and I handed him the memorandum about a half an hour after this conversation, but I had to rush for an engagement, and so I said I will discuss it with you the next morning, and so I did.

Mr. JULIANA. And your instructions to him at the time that you gave him the memorandum were to the effect that the memorandum was not to influence his decision?

Mr. FEUCHT. Yes, sir.

Mr. JULIANA. That is all.

The CHAIRMAN. What would be the purpose of giving it to him if it was not to be considered?

Mr. FEUCHT. What purpose?

The CHAIRMAN. If it was not to be considered?

Mr. FEUCHT. I didn't say that. I said it wasn't to influence his judgment.

The CHAIRMAN. Well, if it is to be considered, and properly considered, it might influence the judgment; might it not?

Mr. FEUCHT. If the other bid was higher; yes.

The CHAIRMAN. Well, the point I am making, and I think I know what you are trying to say, but you gave it to him simply for what it is worth?

Mr. FEUCHT. That is right.

The CHAIRMAN. In the performance of his duties?

Mr. FEUCHT. That is correct.

The CHAIRMAN. When you say it did not influence him, or you told him you didn't want it to influence him, what you meant was the very fact that it came from Cross you didn't want it to influence him other than whatever the facts were?

Mr. FEUCHT. That is correct.

The CHAIRMAN. That is what you are trying to say?

Mr. FEUCHT. Yes; that is what I am trying to say. I am trying to say that we wanted to get the best job for the cheapest price we could possibly get.

Senator JACKSON. I take it that inasmuch as Mr. Brennan was on the committee, you wanted Mr. Brennan to have all of the information bearing on this thing.

Mr. FEUCHT. That is correct.

Senator JACKSON. So you handed him the memorandum so that he would have the benefit of what had transpired in this telephone conversation?

Mr. FEUCHT. That is correct.

PLAINTIFF'S EXHIBIT 62 (Continued)

Senator JACKSON. But you stipulated as an addition to that memorandum the fact that you didn't want the name of Mr. Cross coming as it did from the ICC to in any wise influence above and beyond what the cold hard competitive facts would be in this thing?

Mr. FEUCHT. That is correct.

Senator JACKSON. I see. You didn't want him not to know that you had this call.

Mr. FEUCHT. Well, no; because I wanted to give him the benefit of everything I could get, and in fact I might state that this one outfit, Willett, who I know much better than I know Cross, came to me several months previous to this time, and wanted to know why he could not get in on this thing, and I had said "Well, put your bid up and we will consider it."

The CHAIRMAN. Who was that?

Mr. FEUCHT. Willett & Co.

The CHAIRMAN. That is another company?

Mr. FEUCHT. Yes, sir.

The CHAIRMAN. That did not involve any impropriety in any way?

Mr. FEUCHT. No; but I am trying to say that my object was to get as many people in there to bid on this contract and to get a little competition.

Senator JACKSON. You are interested in cutting costs, if you can.

Mr. FEUCHT. Yes.

The CHAIRMAN. And in improving the service; is that correct?

Mr. FEUCHT. That is correct.

The CHAIRMAN. Is there anything further now that we have not interrogated you about, or anything further within your knowledge or information that you think might be helpful to the committee in the course of this investigation of this matter, that you have not already stated?

Mr. FEUCHT. I don't know of a single thing. I think I gave you everything that I can think of.

The CHAIRMAN. Sometimes we have an experience of a witness later called in public hearings, and he volunteers a lot of information, and when asked why he didn't tell it, he says, "Well, I wasn't asked about it," and so I am leaving it to you to determine whether we have covered the whole area.

Mr. FEUCHT. I think that you have covered the field, as far as I am concerned.

The CHAIRMAN. Mr. Feucht, may I ask you——

Mr. FEUCHT. Just remember how the Irishman spells fight, f-o-i-t. [Laughter.]

The CHAIRMAN. Might I inquire—or first let me say this, and then I will inquire:

As you heard the opening statement of the chairman in the beginning, sometimes information comes to this committee regarding a high public official as in this instance, and when the committee makes a preliminary investigation, or even in the course of executive hearings like this, the committee might well conclude that the charges, as you may term them, actually have no substance. For that reason we try, and we do our best to develop the facts, and all of the material and pertinent facts in an executive session so that if we conclude at the end of the development of the facts that there has been no wrongdoing,

PLAINTIFF'S EXHIBIT 62 (Continued)

and there is nothing to criticize, then the public official or the party involved is spared what might be unfavorable publicity.

And so in asking you not to reveal or not to divulge what you have testified to here today, we are doing it in the interest of fairness to Mr. Cross as well as to this committee and in the interest of the Government.

So we will appreciate it very much, and in fact the chairman will instruct you, and I think that you will comply with the request, not to divulge your testimony here today.

Mr. FEUCHT. I will be very happy to do that.

The CHAIRMAN. And I may say this to you, that any time you or your attorney wants to see this record, the transcript of your testimony, to refresh your memory, or to recall just exactly what you testified to, the transcript of it will be available in the committee here and you may, by request of the chief of the staff, the chief counsel, or me, or any member of the committee, you may have the opportunity to come to the committee room and inspect it together with your attorney.

Now, I do not know yet, and it may be that you will need to be recalled for further testimony, and it could be we would want to recall you some time this week, and yet we may not want to recall you. So, can you tell us where you will be where we can reach you by telephone? I will say this to you, you will not be resubpenaed, but only notified to return, and if you will acknowledge that you are still under subpena, subject to notice to return, then we can release you today for the present so that if you have other engagements or appointments you may want to keep, we would not hold you up.

Mr. FEUCHT. I intend to go back to Chicago tonight.

The CHAIRMAN. Where will you be the remainder of this week?

Mr. FEUCHT. In my office.

The CHAIRMAN. In Chicago?

Mr. FEUCHT. Yes.

The CHAIRMAN. You will be available upon notice, and you could return?

Mr. FEUCHT. That is right.

The CHAIRMAN. With that understanding, Mr. Feucht, you may be excused from further attendance today, subject to notification and subject to call to return.

Mr. FEUCHT All right, sir.

The CHAIRMAN. Thank you very much.

Mr. FEUCHT. You are welcome.

The CHAIRMAN. Just one moment. Will you compare this copy, Mr. Feucht, with the original memorandum that you made and read into the record, so that it may be properly identified and filed as exhibit 1?

(Exhibit No. 1 was read into the record on p. 10.)

Mr. FEUCHT. Do you want me to leave the original with you?

The CHAIRMAN. Well, if you care to, we can take the original.

Mr. FEUCHT. I would just as soon leave the original here.

The CHAIRMAN. Just let the record show that the original was filed as exhibit 1.

Mr. FEUCHT. I think I had better take the copy back for my files.

The CHAIRMAN. All right, you may take the copy back.

All right, we will call Mr. Johnston.

Will you be sworn please, sir?

PLAINTIFF'S EXHIBIT 62 (Continued)

Do you solemnly swear that the evidence you shall give before this Senate investigating subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JOHNSTON. Yes, sir.

TESTIMONY OF WAYNE A. JOHNSTON

The CHAIRMAN. Mr. Johnston, I am Senator McClellan, and my colleagues here are Senator Jackson and Senator Ervin. Others present are members of the committee staff. I have made a statement in the record as to the nature of this hearing and its purpose. I may ask you first, are you familiar with this hearing and its purpose?

Mr. JOHNSTON. I think that I know the purpose of it; yes, sir. I have not been told definitely, but I think that I know the purpose of it.

The CHAIRMAN. The Chair will say to you for your information, that information has come to the committee and some preliminary investigation has been made that indicates that possibly Mr. Hugh Cross, Chairman of the Interstate Commerce Commission, interested himself in a matter that would be foreign to his responsibilities and might involve a conflict of interest in his Government position.

With that general statement, do you feel that you know what the subject of the inquiry is?

Mr. JOHNSTON. Yes, sir.

The CHAIRMAN. I may also state to you that you are entitled if you desire it, to have counsel present.

Mr. JOHNSTON. It is not necessary.

The CHAIRMAN. You do not care for counsel?

Mr. JOHNSTON. No.

The CHAIRMAN. Then we are ready to proceed.

Will you state your full name, your residence, and your occupation for the record, please, sir?

Mr. JOHNSTON. The name is Wayne A. Johnston, and I live at 2509 Brayburn Road, Flossmoor, Ill., and I am president of the Illinois Central Railroad.

The CHAIRMAN. The Chair is going to ask the chief counsel to interrogate you. I interrogated the preceding witness, and I am not quite as familiar with your testimony, what it is anticipated it will be, as is counsel for the committee, and I will ask him to interrogate you, Mr. Johnston.

Mr. KENNEDY. Mr. Johnston, you are familiar with this contract in Chicago, regarding the transfer of passengers and baggage from one station to another?

Mr. JOHNSTON. In a general way; yes, sir.

Mr. KENNEDY. Your railroad is a member of the subcommittee that considered the various bids that were made in this contract?

Mr. JOHNSTON. Yes, sir; we had a representative on that.

Mr. KENNEDY. There were six railroads represented on that committee, is that correct?

Mr. JOHNSTON. That is about it; yes, sir.

Mr. KENNEDY. On that subcommittee?

Mr. JOHNSTON. Yes, sir.

Mr. KENNEDY. Now, there were three different companies that made bids on this contract, is that right? Are you familiar with that?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. JOHNSTON. I am not familiar, but I had understood that there were 13 or 14 that were asked to bid, and that there were 3 or 4 that made either a verbal bid or a written bid, in connection with it.

Mr. KENNEDY. And finally it came down ultimately between the Parmalee Co. and Keeshin Co., is that correct?

Mr. JOHNSTON. Yes.

Mr. KENNEDY. The Keeshin interests.

Mr. JOHNSTON. That is correct.

Mr. KENNEDY. Now, did you have any contact with Mr. Cross regarding the Parmalee interests or the Keeshin interests?

Mr. JOHNSTON. Well, the contact which I had with Mr. Cross was to the effect that I heard he was interested in coming to Chicago as the head of the new organization that was to be known as the Railway Transportation Agency, or something of that sort.

Mr. KENNEDY. That was a company run by Mr. Keeshin, is that correct?

Mr. JOHNSTON. That is correct.

Mr. KENNEDY. You had heard that he was to go to work?

Mr. JOHNSTON. I heard that he would.

Mr. KENNEDY. As an overseer in this new company being formed by Keeshin?

Mr. JOHNSTON. And I assumed as the head of it.

Mr. KENNEDY. You assumed as the head of it?

Mr. JOHNSTON. Yes, sir.

Mr. KENNEDY. From whom did you hear that?

Mr. JOHNSTON. I heard that in Chicago, and I can't say just who told me that, but it was rumored in Chicago that that was a fact, and when I was in Washington, as a rule I tried to see Hugh, and other Commissioners, and on one of the occasions following that information I asked Hugh if it were a fact that he were interested in coming to Chicago. Prior to that time we had given consideration, or the railroads had given consideration in connection with our legislative situation in the State of Illinois, to having Hugh head up the legislative group, and the Illinois Central Railroad is the chairman road. But we never got together on it, and we did not ask him to come.

Having had that information, I was rather interested to see whether he was going to come to Chicago. So I asked him if he had any intention of that, and he said that if things worked out satisfactorily he probably would come to Chicago in connection with this contract.

Mr. KENNEDY. When he said "if things worked out satisfactorily" did he amplify it or did you understand that if Keeshin received this contract he was to come to work for him?

Mr. JOHNSTON. I would assume that that was his interest, yes.

Mr. KENNEDY. That was what was meant when he said that?

Mr. JOHNSTON. And I assume that there were other things involved in connection with it, such as his leaving the service here in Washington, and so forth. I did not explore it any further, and he didn't make any more comments, and I didn't explore it any further.

Mr. KENNEDY. You have known Mr. Cross for some while, have you?

Mr. JOHNSTON. I have known him for a number of years.

Mr. KENNEDY. When he was Lieutenant Governor in Illinois?

Mr. JOHNSTON. Yes, sir.

Mr. KENNEDY. And you are a close personal friend of his?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. JOHNSTON. I am considered so; yes, sir.

Mr. KENNEDY. And when did your visit to Washington take place?

Mr. JOHNSTON. I would say it was 3 or 4 months ago; prior to the time that this contract was let.

Mr. KENNEDY. And you having heard that he was to go to work for one of these Keeshin interests, for this new transfer company, you asked him if that was correct, is that right?

Mr. JOHNSTON. That is correct.

Mr. KENNEDY. And he said if everything worked out satisfactorily?

Mr. JOHNSTON. He probably would, or something to that effect, and he gave me the impression that he was coming to Chicago if everything worked out satisfactorily.

Mr. KENNEDY. Did you have any other discussions with him?

Mr. JOHNSTON. No, sir.

Mr. KENNEDY. That is the only discussion you ever had with him regarding the Keeshin company?

Mr. JOHNSTON. That is right, and I had no discussion with anybody else about it because I thought it was not of too much importance.

Mr. KENNEDY. Did he ever ask you at any time to give favorable consideration to the Keeshin company?

Mr. JOHNSTON. No, sir.

Mr. KENNEDY. He never did?

Mr. JOHNSTON. No, sir.

Mr. KENNEDY. The only conversation that you had was that one conversation?

Mr. JOHNSTON. And I had no conversation with our representative on the committee concerning my conversation with Hugh Cross.

Mr. KENNEDY. And you are unable to tell us where you first heard the information that he was coming to work for Keeshin?

Mr. JOHNSTON. That is right, I could have heard it at the club, or from any other places, but I heard it in Chicago and it attracted my attention because of our previous relationships, and I just wondered if he was interested.

The CHAIRMAN. Then he did not approach you about it?

Mr. JOHNSTON. He did not approach me; no, sir.

The CHAIRMAN. But simply upon your inquiry to him, admitted or made the statement that if things worked out satisfactorily, he might come?

Mr. JOHNSTON. That is right.

The CHAIRMAN. Neither of you pursued that or to amplify it as to what was meant by "satisfactory," or what contingency was involved?

Mr. JOHNSTON. I might go back, and our relationships have been of a very personal nature over the years, and I might go back and say that at the time we considered, as you probably know, the railroads have railroad legislative groups in each State. When our general counsel retired, or had died, and who was the head of that, we considered who we were going to have succeed him, and we talked to Hugh about it. I didn't; but our general counsel did. He is responsible for the legislation. I was just naturally curious, because we had been told that he was interested in finding something in the State of Illinois.

Mr. KENNEDY. I would like to go back a bit on this question of "satisfactory." When Mr. Kamerick went out to interview you,

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. Johnston, didn't you state at that time that Cross told you that he might become associated and would become associated with the Keeshin interests, if Keeshin was successful in securing the contract with the Chicago railroads?

Mr. JOHNSTON. I don't know that he ever mentioned Keeshin's name, but we referred to this relationship that Keeshin was going to operate.

Mr. KENNEDY. And didn't he say, if this company received this contract, he was going to go to work for them?

Mr. JOHNSTON. That is the transfer company, and there is a different relationship I think between John Keeshin and this. I think John Keeshin has other interests, and I am talking now specifically about this, and I don't know that I ever mentioned John Keeshin.

Mr. KENNEDY. If this one company received this contract out in Chicago, or did he say if this company was successful in receiving this contract he was going to go to work for them?

Mr. JOHNSTON. He expected that he would be going out there to go to work for them, and I assumed as the head of it.

Mr. KENNEDY. It wasn't just a question if everything worked out satisfactorily, he specifically stated that if this company receives this contract, he was going to work for them?

Mr. JOHNSTON. That is right.

The CHAIRMAN. That company that he referred to is the Keeshin Co.?

Mr. JOHNSTON. Well——

The CHAIRMAN. It is the one they organized.

Mr. JOHNSTON. To operate this, and I am trying to distinguish between whether it is the Keeshin company as such, or this transportation agency, because Keeshin may have other interests, and I don't know that he was going to head the overall interests.

The CHAIRMAN. I think that he does.

Mr. JOHNSTON. I didn't know that.

The CHAIRMAN. I am confident he does have other interests, but this Railroad Transfer Service, Inc., that is the company.

Mr. JOHNSTON. That is the company.

The CHAIRMAN. And that was the company identified in your conversation, that if this company got this contract he expected to be coming out there to work for it.

Mr. JOHNSTON. That is right.

The CHAIRMAN. Do we have anything further?

Senator ERVIN. Your recollection is that that conversation occurred before the contract was actually made?

Mr. JOHNSTON. That is right, I will say that because later on, and I gave Mr. Kamerick, when he came out to see me, I gave him a copy of the memorandum in our file prepared by one of our folks, indicating that it was subsequent to that.

The CHAIRMAN. Are there any other questions?

Senator JACKSON. You just happened to be in Washington to pay a social call?

Mr. JOHNSTON. I am here once a month, for an AAR Board meeting, and I try to make the rounds to see the various Commissioners, and I do it on the basis of social relationships, or if I have anything that I want to talk about.

PLAINTIFF'S EXHIBIT 62 (Continued)

On this particular occasion it happened to be a very personal matter, and I went around, and it occurred to me, and I asked the question, and I got that answer.

Senator JACKSON. You had heard this story in Chicago and you are a personal friend of Mr. Cross?

Mr. JOHNSTON. I had been for years.

Senator JACKSON. And so you dropped by to see him, and asked him if there was anything to this rumor that you had heard?

Mr. JOHNSTON. Just as you would if you had met anybody at the club or on the street.

Senator JACKSON. I understand.

(A document was handed to the witness.)

The CHAIRMAN. You have identified these memorandums?

Mr. JOHNSTON. Yes, sir.

The CHAIRMAN. Let them be admitted as exhibits 2 and 3, respectively.

(Exhibit Nos. 2 and 3 will be found in the appendix on p. 82.)

Senator JACKSON. Have you talked to Mr. Cross since that conversation?

The CHAIRMAN. And No. 4 will be admitted.

(Exhibit No. 4 will be found in the appendix on p. 83.)

Mr. JOHNSTON. I have seen Hugh since that time.

Senator JACKSON. But there was nothing said in relation to this matter?

Mr. JOHNSTON. No.

Senator JACKSON. And you haven't been in touch with his lawyer or anyone else, directly or indirectly, as to this matter?

Mr. JOHNSTON. No, sir; I am not interested, nor did I bring my lawyer with me.

The CHAIRMAN. Are there any other questions?

Mr. Johnston, the chairman made this statement to the preceding witness, and I am making it to you.

In my opening remarks when the committee convened this morning, I stated that the information that had been developed made it our duty to inquire into the propriety of Mr. Cross's actions. It was our duty to determine whether there had been any misconduct or if there hadn't been, and if there hadn't been, we of course should so state.

But we have tried in this to protect Mr. Cross, who is a high public official, and to protect him from any adverse publicity until and unless such facts were developed as would warrant it.

For that reason we are asking you, out of consideration for Mr. Cross, and also the committee in the performance of its duties, not to divulge to anyone the nature of your testimony here this morning.

This is an executive session, and sometimes these things leak out in spite of all we can do, but it is our duty to try to protect an individual as well as try to proceed in a manner that will best serve the interests of the Government. We would ask you not to discuss it.

I may advise you that a transcript of your testimony will be kept on file with the committee, and will not be released except on a majority vote of the committee, or not made public, but at any time it is your privilege to come and inspect this transcript to refresh your memory or for any purpose you desire. You may do that or have your attorney do it here in the committee room in the presence of

PLAINTIFF'S EXHIBIT 62 (Continued)

members of the staff. You will not be furnished a copy. We do not do that in executive sessions, but we always make it available to the witness or his attorney to read it and refresh their memory about it.

Mr. Johnson, the Chair will instruct you to get in touch with the chief counsel of the committee at 4 o'clock this afternoon, at which time he will probably be able to advise you whether you will be needed immediately in a public hearing or be recalled for your testimony in a public hearing. Until that time you are released, upon your agreeing to return to the committee upon notice, to give further testimony, and acknowledging that you are under the same subpena that originally was served on you.

At that time, the chief counsel is authorized, if public hearings are not imminent, to release you from further attendance until such time as you have been given reasonable notice to return and testify in public.

Is that satisfactory with you?

Mr. JOHNSTON. Yes, sir.

The CHAIRMAN. All right, thank you very much, and we are hopeful that we can release you this afternoon.

Mr. JOHNSTON. I hope you can, too.

The CHAIRMAN. Thank you very much.

Mr. JOHNSTON. Yes, sir.

The CHAIRMAN. At this point, the Chair will, without objection, insert in the record as a part of the record, an affidavit from Mr. Howard E. Simpson, president of the Baltimore & Ohio Railroad Co., and two affidavits from Mr. Fred G. Gurley, president and chairman of the executive committee of the Atchison, Topeka & Santa Fe Railroad Co.

These will be printed in the record at this point, as a part of the hearings.

(They are as follows:)

STATE OF MARYLAND,
City of Baltimore, ss:

Howard E. Simpson, being duly sworn, says: I am president of the Baltimore & Ohio Railroad Co. During the spring of 1955 Mr. Hugh Cross, a member of the Interstate Commerce Commission, in the course of a conversation with me, asked if I was familiar with negotiations of the railroads in Chicago with respect to the transfer of passengers and baggage between railroad stations in that city. I told him that our passenger traffic officers had informed me sometime previously that the then existing contract with the Parmalee Co. for this transfer service would expire during 1955, and that the passenger officers of all the Chicago railroads were then considering what arrangements should be made for continuing the service thereafter, but that I did not know any of the details. In response to his further inquiry if I would find out the status of the matter and let him know, I later ascertained from our passenger officers that the Chicago lines had requested competitive bids for the transfer service after the Parmalee contract expired, and I relayed this information to him by telephone, for which he thanked me. To the best of my recollection, Mr. Cross inquired about developments in the matter a couple of times later on in conversations with him on other things.

At no time in any conversation did Mr. Cross endeavor in any way to influence me with respect to the transfer arrangements that should be made in Chicago or that the Chicago lines were considering and I had no knowledge of his having any arrangement to join Keeshin or any other company.

(Signed) HOWARD E. SIMPSON.

Sworn to and subscribed before me this 11th day of November 1955.

[SEAL] (Signed) FRED N. HEISE,
Notary Public.

My commission expires May 6, 1957.

PLAINTIFF'S EXHIBIT 62 (Continued)

AFFIDAVIT

COUNTY OF COOK,
State of Illinois, ss:

I, Fred G. Gurley, do swear and depose as follows:

1. I am president and chairman of the executive committee of the Atchison, Topeka & Santa Fe Railroad Co. My office is in Chicago, Ill.

2. I have known Mr. Hugh W. Cross for 15 years, or since he became Lieutenant Governor of Illinois in 1940. During this time I have had a friendly but casual acquaintanship with him. We have never had a serious business discussion, and I probably have not engaged in casual conversation with him more than a half dozen times in the whole period. I have never had any business dealings with him, although of course, the Atchison, Topeka & Santa Fe Railway system is subject to regulation by the Interstate Commerce Commission, of which Mr. Cross has been a member for the past 6 years.

3. Mr. Cross has not talked with me about the transfer of the passenger and baggage transportation contract between railroad stations in Chicago from the Markin or Parmalee interests to the Keeshin interests, and he has not written or otherwise communicated with me on the subject.

4. Since the question was raised a few weeks ago by a Senate investigator, I have made inquiries among those members of the official staff of the Atchison, Topeka & Santa Fe Railway system who would be likely to know about the matter, and I have received reports that the same is true of them—they have had no communication, written or otherwise, with Mr. Cross regarding the transfer of the contract.

(Signed) FRED G. GURLEY.

Subscribed and sworn to before me this November 8, 1955.

[SEAL] (Signed) WILBUR L. CAMP,
Notary Public, Cook County, Ill.

My commission expires September 15, 1956.

AFFIDAVIT

COUNTY OF COOK,
State of Illinois, ss:

I, Fred G. Gurley, do swear and depose as follows:

1. I am president and chairman of the executive committee of the Atchison, Topeka & Santa Fe Railway Co. My office is in Chicago, Ill.

2. This affidavit is made to supplement an affidavit which I executed on November 8, 1955, regarding the so-called Markin-Keeshin controversy.

3. Prior to the award of the station transfer contract in Chicago to Mr. Keeshin about June 15, 1955, I had heard rumors that Mr. Hugh W. Cross, a member of the Interstate Commerce Commission, was unhappy in Washington and contemplating resigning and returning to his native State of Illinois. Some time subsequently to this in the spring of 1955 I heard rumors and statements to the effect that Mr. Cross would become associated with the Keeshin organization if it should succeed in securing the transfer contract. I have had no conversation or communication of any kind with either Mr. Cross or Mr. Keeshin regarding the truth of these reports.

(Signed) FRED G. GURLEY.

Subscribed and sworn to before me this November 10, 1955.

[SEAL] (Signed) WILBUR L. CAMP,
Notary Public, Cook County, Ill.

My commission expires September 15, 1956.

The CHAIRMAN. Do you solemnly swear that the evidence you shall give before this investigating subcommittee shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. O'DONNELL. I do.

PLAINTIFF'S EXHIBIT 62 (Continued)

TESTIMONY OF DONALD F. O'DONNELL

The CHAIRMAN. State your name for the record.

Mr. O'DONNELL. Donald F. O'Donnell.

The CHAIRMAN. What is your present position with this investigating subcommittee?

Mr. O'DONNELL. Assistant chief counsel.

The CHAIRMAN. In the course of the performance of your duties, have you had occasion to check with the telephone company regarding telephone calls placed by Mr. Hugh W. Cross, Chairman of the Interstate Commerce Commission to Mr. John L. Keeshin, of Chicago?

Mr. O'DONNELL. I have.

The CHAIRMAN. Have you also checked the telephone records with respect to the telephone calls placed by Mr. Keeshin to Mr. Cross?

Mr. O'DONNELL. I have.

The CHAIRMAN. Over what period of time did you check these records?

Mr. O'DONNELL. The telephone calls from Mr. Cross to Mr. Keeshin were checked from April 1, until the end of October.

The CHAIRMAN. From April 1, to the end of October.

Mr. O'DONNELL. That is right. Now, the telephone calls of Mr. John L. Keeshin to Mr. Cross were checked from April 1 until the end of September. We have not received the October calls yet.

The CHAIRMAN. Were these telephone records delivered to you or to the committee in response to a subpena?

Mr. O'DONNELL. Yes, they were; in both instances. That is Mr. Cross and Mr. Keeshin.

The CHAIRMAN. In both instances?

Mr. O'DONNELL. That is correct.

The CHAIRMAN. Have you made a summary of these telephone calls that you could place in the record?

Mr. O'DONNELL. I have.

The CHAIRMAN. Just read that summary to us, and do you have the original tickets or copies of the original tickets of the calls made by the telephone company?

Mr. O'DONNELL. Yes, sir; I have.

The CHAIRMAN. Then you have a summary of them that you have prepared?

Mr. O'DONNELL. That is right.

The CHAIRMAN. The summary will be copied into the record at this point. The original tickets will be kept on file with the committee.

(The summary is as follows:)

PLAINTIFF'S EXHIBIT 62 (Continued)

Date	Person called and person calling	Calling number	Telephone called	Minutes	Time
1935					
Mar. 23	Keeshin to Cross	Andover 3-6685 (Chicago, Ill.).	Oliver 2-6019 (Maryland).	2	10:25 p. m.
Apr. 6	Cross to Keeshin	Oliver 2-6019	FO 9-7450 (Chicago, Ill.).	16	11:18 p. m.
Apr. 15	do	do	FO 9-7450	18	9:43 p. m.
Apr. 16	do	do	do	12	
Apr. 18 [1]	Cross to Simpson	do	LE 9-0400 (Baltimore, Md.) (Bill to Brad, OL 2-6019. Call made from LD 7203 (ICC).	3	4:30 p. m.
Apr. 25	Cross to Keeshin	do	FO 9-7450	15	8 p. m.
Apr. 28	Keeshin to Cross	——— 7450	Oliver 2-6019	24	10:12 p. m.
May 3 [1]	Cross to Simpson	Oliver 2-6019	LE 9-0400	6	4:26 p. m.
May 10	Keeshin to Cross	Andover 3-6685	Oliver 2-6019	30	11:03 p. m.
May 12	Cross to Keeshin	Oliver 2-6019	Andover 3-6685	8	9:51 p. m.
May 13 [2]	Cross to Feucht	do	DE 2-2121		
May 15	Cross to Keeshin	do	FO 9-7450	6	6:52 p. m.
May 17	Keeshin to Cross	Andover 3-6685	Carrolton 112	6	10:02 a. m.
May 19	do	do	National 8-7460 (ICC).	26	2:46 p. m.
May 20	do	do	National 8-7460	13	2:46 p. m.
May 20 [1]	Cross to Simpson	Oliver 2-6019	LE 9-0400 (Bill to Brad, OL 2-6019. Call made from LD 7204 (ICC)).	7	3:22 p. m.
May 20	Keeshin to Cross	——— 7451	Oliver 2-6019	46	9:57 p. m.
May 23	Cross to Keeshin	Oliver 2-6019	Andover 3-6685	25	11:51 p. m.
May 24	Keeshin to Cross	Andover 3-6685	National 8-7460	9	11:31 a. m.
May 24	Cross to Keeshin	Oliver 2-6019	FO 9-7450	21	8:02 p. m.
June 8	Keeshin to Cross	Andover 3-6685	National 8-7460	5	8:48 a. m.
June 8 [1]	Cross to Simpson	Oliver 2-6019	LE 9-0400	5	4:38 p. m.
June 13	Cross to Keeshin	do	FO 9-7450	24	7:50 p. m.
June 23	do	do	Eagle River Rd.	25	8:55 p. m.
July 12	do	do	FO-9-7450	14	11:09 p. m.
July 14	Keeshin to Cross	——— 7450	Oliver 2-6019	27	9:56 p. m.
July 21	Cross to Keeshin	Oliver 2-6019	Eagle River Rd., Wisconsin 225.	9	8:39 p. m.
July 21	Keeshin to Cross	Eagle River, Wis., charge to Andover 3-6685 (Keeshin).	Oliver 2-6019	23	—— p. m.
July 27	Cross to Keeshin	Oliver 2-6019	Andover 3-6685	22	5:38 p. m.
July 28	do	do	do	13	12:14 p. m.
July 29	Keeshin to Cross	——— 7450	Oliver 2-6019	23	10:48 p. m.
Sept. 9	do	——— 7451	do	19	10:52 p. m.
Sept. 14	Cross to Keeshin	Oliver 2-6019	SU 7-3358	19	6:21 p. m.
Sept. 15	do	do	Andover 3-6685	20	5:44 p. m.
Sept. 16	do	do	do	3	6:15 p. m.
Sept. 18	Keeshin to Cross	——— 7450	Oliver 2-6019	2½	6:34 p. m.

[1] Howard E. Simpson, president of the Baltimore & Ohio RR.
[2] Paul E. Feucht, president of the Chicago & Northwestern RR.

Total number of calls, Cross to Keeshin, 18.
Total number of calls, Keeshin to Cross, 14.

The CHAIRMAN. Now, may I also inquire if there are some other telephone calls from the records of the telephone company that you regard as pertinent to this inquiry?

Mr. O'DONNELL. Yes, sir, Mr. Chairman.

The CHAIRMAN. I wish that you would elaborate on those.

Are those included in your summary?

Mr. O'DONNELL. Yes, sir; they are.

The CHAIRMAN. They are included in the summary that you have filed?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. For the information at the present or for the immediate information of the committee, just give us a brief statement about the other calls, those other than the calls between Mr. Keeshin and Mr. Cross. What is the nature of the other calls?

Mr. O'DONNELL. There is one telephone call on May 13 to Mr. Feucht, for 11 minutes, at 5:10 p. m., from the telephone number

PLAINTIFF'S EXHIBIT 62 (Continued)

Oliver 2–6019, which is the private telephone of Mr. Cross at his house. That is May 13.

The CHAIRMAN. What others?

Mr. O'DONNELL. There are 4 telephone calls from Oliver 2–6019 to Mr. H. E. Simpson, and I say that specifically because they were person-to-person calls in each instance: 1 on April 18, 1 on May 13, 1 on May 20, and 1 on June 8, and I might point out that on the April 18 call and on the May 20 call he apparently called from long distance 7–7202, and 7–7203, which are the telephone numbers of the Interstate Commerce Commission, and he specifically asked that they be billed to Oliver 2–6019, his private home.

The CHAIRMAN. To whom were those four calls you have referred?

Mr. O'DONNELL. The four calls were made to Mr. H. E. Simpson, who is the president of the B. & O. Railroad in Baltimore, Md.

The CHAIRMAN. Is that the Mr. Simpson whose affidavit we have placed in the record?

Now, do you have any calls from Mr. Simpson to Mr. Cross, or have you been able to check into that?

Mr. O'DONNELL. From May 1 until the present date, or until the first of November, there are no telephone calls from Mr. Simpson to Mr. Cross.

The CHAIRMAN. So if Mr. Cross telephoned Mr. Simpson to inquire about the status of this contract that is under consideration, and Mr. Simpson as stated in his affidavit got the information and related it to Mr. Cross, he did so so far as the telephone records reflect, upon further calls from Mr. Cross, making inquiry about it.

Mr. O'DONNELL. That is correct.

The CHAIRMAN. Have you pursued or are you pursuing the matter of getting the tickets on the other calls from Mr. Simpson back to Mr. Cross?

Mr. O'DONNELL. Yes; we have, Mr. Chairman.

The CHAIRMAN. You have not secured it as yet?

Mr. O'DONNELL. We have not secured it.

The CHAIRMAN. But you are pursuing that and trying to secure it?

Mr. O'DONNELL. Yes.

Mr. KENNEDY. In the conversation regarding this, Mr. Simpson said that he called——

The CHAIRMAN. We will let the record stand as it is, and if we go into public hearings we will bear that in mind, and that gap will be filled in.

Are there any further questions of Mr. O'Donnell?

All right, thank you very much.

We will recess until 2 o'clock.

(Thereupon, at 11:35 a. m., the committee recessed, to reconvene at 2 p. m., the same day, Tuesday, November 15, 1955.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Will you be sworn, Mr. Keeshin, please?

Do you solemnly swear that the evidence you shall give before this Senate investigating subcommittee shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. KEESHIN. I do.

PLAINTIFF'S EXHIBIT 62 (Continued)

TESTIMONY OF JOHN L. KEESHIN

The CHAIRMAN. Mr. Keeshin, for the record, will you state your name, your place of residence, and your occupation?

Mr. KEESHIN. John L. Keeshin. My residence is at 1003 Bonnie Brae, River Forest, Ill. My occupation is motor transportation.

The CHAIRMAN. Mr. Keeshin, you have had a conference with me and also with members of the staff of the subcommittee, and therefore you are fully advised of the nature of the inquiry.

Mr. KEESHIN. I am now.

The CHAIRMAN. You have your attorney present with you this afternoon?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. Will you identify yourself for the record please, sir?

Mr. MESEROW. Albert J. Meserow, 231 South La Salle Street, Chicago, Ill.

The CHAIRMAN. Mr. Meserow, as attorney for the witness, you have the privilege of advising him on any legal matters that may be raised, if any, advising him as to his rights as you see it. He has the privilege of consulting with you at any time during the proceedings with respect to his rights. Other than that, you are not permitted to examine the witness or to take any further part. It is merely for the purpose of consultation. This is not a trial, it is an inquiry.

If you have any questions that you think should be asked the witness that will aid the committee in its work, if you will submit them to the Chair we will pass on them and ask the witness, if we think the question is proper and pertinent to the inquiry.

Mr. MESEROW. Thank you.

The CHAIRMAN. Now, we will proceed. Mr. Kennedy, as chief counsel, you may interrogate the witness.

Mr. KENNEDY. Mr. Keeshin, you are in the motor transport business, is that correct?

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. You have a number of different companies?

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. Could you list those companies for the record?

Mr. KEESHIN. Yes, sir.

I have the C. A. Conklin Truck Lines; Truck Rail Terminals, Inc.; Keeshin Transport System, which is the company; Fidelity Industries, and Railroad Transfer Service, Inc.

Mr. KENNEDY. Do you own all of those companies listed, and are you the chief stockholder in the corporation?

Mr. KEESHIN. My wife and I. I am the principal stockholder of all of them. That is, some of the stock is divided between my family and myself.

Mr. KENNEDY. Now, those companies all have to do with trucking; is that correct?

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. At the end of 1954, did you become interested in this motor transport contract between various terminal stations in Chicago for the transportation of luggage and passengers?

Mr. KEESHIN. I filed a proposal on the 15th of December 1954, to the railroads.

Mr. KENNEDY. Would you tell the committee briefly how it arose that you became interested, and who came to see you?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. It was early in August of 1954. A Mr. Sidney Bonn, passenger traffic manager of the New York Central, together with a Mr. Dave Mackey, freight traffic manager of the New York Central, came to my office at the First National Bank Building at Chicago. At that time they asked if I would be interested to make a survey and submit a bid to the railroads for the purpose of handling passengers and baggage—that was the early part of August, I believe.

Mr. KENNEDY. Then did you decide that you would submit a proposal?

Mr. KEESHIN. At first I was somewhat reluctant because I stated that I had been primarily in the freight business, that I did not have too much experience in the handling of passengers, but I would be willing to look into the picture. They indicated that they had submitted requests to various other companies in the field, and they would like for me to look into it and make a survey if I could. They would be interested in having me try it.

Mr. KENNEDY. Then, on December 15, you submitted a proposal; is that correct?

Mr. KEESHIN. After I had made a survey, and I had our boys look into the entire operation of the various six railroad stations throughout Chicago, and checked the baggage operations, and of course had various meetings with the various railroad committees regarding this proposal, and I admitted that at the time we were asked to make the bid there were a number of other companies that I would like to mention who also were asked to bid on this.

The CHAIRMAN. You can either read them, or just hand them to the stenographer, and he can record them.

Mr. KEESHIN. I will mention them. The Railroad Express Agency; F. Landon Cartage Co.; Willett Teaming Co.; Chicago Gray Line; Ayers Cartage; Chicago Tunnel; the New York Gray Line; Keeshin Co.; and Parmalee Transfer.

The CHAIRMAN. If I understand you correctly, as far as you know, that is the list, the entire list of those who were asked to interest themselves in this?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. All right.

Mr. KENNEDY. There was a committee set up, a subcommittee of the various railroads that bring passengers into Chicago. There was a subcommittee of six different railroads set up to consider this bid, or these bids; is that correct?

Mr. KEESHIN. I was given to understand that.

Mr. KENNEDY. And you had some meetings with this subcommittee; is that true?

Mr. KEESHIN. Most of my meetings at first were held with Mr. Sidney Bonn, who was acting as the chairman, or vice chairman of this committee.

Mr. KENNEDY. Ultimately, you had other meetings?

Mr. KEESHIN. Yes; and I met with the entire committee.

Mr. KENNEDY. Then, on June 13, 1955, you received notification that your bid was the one that was to be accepted by this committee.

Mr. KEESHIN. Well now, if I may, I would like to handle this. I filed my proposal with Mr. Sidney Bonn, of which I believe you folks have a copy here. On December 15, 1954, that was done. Not having heard further, I left and was gone for several weeks, and

PLAINTIFF'S EXHIBIT 62 (Continued)

returned the latter part of March. I went to Honolulu, my wife and I, who had been ill. I returned the latter part of March, and in fact probably the last week of March. At that time I sent another memorandum, because I had received an inquiry from Mr. Bonn regarding some labor negotiations that had been going on throughout Chicago for the various teamsters. I then sent him a letter apprising him of the labor contracts, and also this is a letter that I sent to Mr. Bonn on April 6, 1955.

The CHAIRMAN. May I inquire if that letter is in any way related to this contract?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. All right. You may identify it, and it will be made a part of the record.

Mr. KEESHIN. I would like to of course leave this or have it copied.

Mr. MESEROW. Mr. Chairman, if I may interject here, in order to assist the committee, we have a whole file of correspondence of Mr. Keeshin and the railroad committee, and Mr. Bonn which we would like to make available to the committee if they desire it.

The CHAIRMAN. It may all be made available to the committee for its inspection, but we do not want to encumber the record with purely extraneous matters. So let the witness identify the letter, and then it can be left with the committee, and if he wishes to make any comment—I don't think it will be necessary to read all of them into the record. But any pertinent comment that you care to make regarding the letter and what purpose it served or how it is related to this inquiry, you may state it.

Mr. KEESHIN. In writing this letter, I merely reminded him that I had not been very specific in my original proposal of that date; that is, the type of equipment, and a matter regarding the handling and loading of the trunks and baggage to and from, and also the assignment of the various passenger agents if you were going to set them up, so that I made mention of all of that. Also, that we would put in, in lieu of the straight trucks, this was going to be a tractor-trailer operation, a shuttle system for the handling of baggage.

The CHAIRMAN. May I inquire then, would you regard that as an amendment or clarification of your previous bid?

Mr. KEESHIN. Yes, because I had written to him in response to a letter that I had received from Mr. Bonn, just a few days prior, and I believe——

The CHAIRMAN. They may be marked "Exhibits for file with the committee," but not for the record, as of the present. You can identify them and mark them as exhibits for filing with the committee. Hereafter, if we find that any of them are pertinent and belong in the permanent record of the hearings, we will so order.

All right, you may proceed.

Mr. KENNEDY. Are you finished now?

Mr. KEESHIN. After I sent this reply, I received a letter back from Mr. Bonn acknowledging my letter to him that I had sent over my letter of April 6, with the supplements that I had set up, and this is the original letter that I had where they confirmed the type of trailers, such as, for example, I stated that they would be 20-foot trailers, and passenger agents on 16-hour duty. That is, two shifts.

Mr. KENNEDY. Wasn't it ultimately—you received notification on June 13 that your proposal was accepted?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. That is what I wanted to know.

The CHAIRMAN. Now, is there any other correspondence aside from what you have introduced there, that you think may be of information to the committee that you would like to file with the committee? Let us get that all filed now.

Mr. KEESHIN. These are originals. Will I get them back?

The CHAIRMAN. You will get them back, and you may refer to them by number as they are numbered here, and submit copies of them, retaining the originals if you like.

Mr. KEESHIN. Exhibit No. 3[1] is the photostat of the original letter that I received from Mr. Bonn, dated August 27, 1954.

The CHAIRMAN. Now go through them and identify them that way and let us get them numbered.

Mr. KEESHIN. That letter together with their original proposal that they submitted to all of the other carriers, to be able to figure on the bid.

The CHAIRMAN. All right. Now, do you have any other correspondence or documents there that you think are pertinent to this inquiry?

Mr. KEESHIN. This is exhibit No. 4,[1] a letter dated December 13, signed by Mr. Padrick, in which this was referring to the subject of the matter of agreement with the Brotherhood of Clerks employed at the station in contrast to the fact that my employees were going to be members of the truckdrivers union, in lieu of the Brotherhood of Clerks.

Attached to that is also a letter from Mr. Padrick, outlining the trailer space at the baggage-room docks in the various stations. There was a question as to how many trailers we could spot at the baggage rooms of the various railroads.

(At this point, Senator McCarthy entered the hearing room.)

The CHAIRMAN. Would you identify Mr. Padrick?

Mr. KEESHIN. He is the chairman of the Western Passenger Association, E. B. Padrick.

The CHAIRMAN. That is the association that was representing all of the railroads at the time?

Mr. KEESHIN. Yes; there were 21 railroads, to be exact.

I would like to also identify exhibit 5,[1] showing one of my companies, the Truck Rail Terminal Co., which I own jointly with my wife of course, showing the amount of freight revenue my company created and paid to the railroads over a period of 2 years and 4 months, which totaled over $8.1 million in freight revenue that we paid out to the railroads.

The CHAIRMAN. All right. That may be filed.

I may say, Mr. Keeshin, as far as I know, there is no question about your financial responsibility involved in this, but anything you think that you would like to have the committee see is all right.

Senator JACKSON. I wanted to ask, what was the purpose of that last document? I don't quite understand that. Let the witness answer, please.

[1] This number refers to material filed by Mr. Keeshin with the subcommittee and is not to be confused with the officially numbered exhibits mentioned elsewhere in this testimony.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. The purpose of that was the fact that I am a highway carrier; one of my companies is a highway common carrier trucker. I might say that I have been in the transportation business for almost 40 years. In order to have the railroads give consideration that I was not only a competitor on the highway but actually one of my companies gave to the railroads more freight revenue charges that we actually paid than what I did on the highway. That was one thing that I had a complete breakdown of, naming all of the railroads showing in dollars and cents what we have paid to the railroads.

Senator JACKSON. What does that prove?

Mr. KEESHIN. That I am a pretty big customer of theirs, so that I should be given at least some fair consideration.

Senator JACKSON. This was a competitive bid?

Mr. KEESHIN. Yes, sir.

Senator JACKSON. What would that have to do with a competitive bid?

Mr. KEESHIN. Merely this, being I am a common carrier trucker and I am a competitor of the railroad on the highway, in one of my companies, I also wanted them to know that another company of mine that I owned, namely Truck Rail Terminals, was a consolidator of freight in boxcars, and gave to the railroads that much revenue.

The CHAIRMAN. That is something that you presented in support of your bid?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. As a sort of recommendation of yourself to the other contr[illegible] authorities?

Mr. KEES[illegible] That is right.

The CHAIRM[illegible] .. All right. It may be filed.

You have there in your hand a series of pictures of some of your equipment?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. They may be filed as a single exhibit. That will be exhibit 6.[1]

Mr. KEESHIN. There is a series of 8 pictures, of the type, these are all Ford station wagons, 50 of them, and 10 Volkswagons.

The CHAIRMAN. Since this contract was entered into and placed into service?

Mr. KEESHIN. Yes, sir; and also a picture of one of the new type that we just received which had been built, a Ford converted into a 12-passenger job. That also has a picture of some of our agents where we put in the type similar to the airline stewardesses, and we have women agents that are all dressed to handle the passengers at the various railroad stations, such as this type.

The CHAIRMAN. All of them may be placed in the record.

Mr. KEESHIN. I also might say that the buses and Ford station wagons are all air-conditioned, and two-way radio equipped, and power braked, and power steering. In one of our proposals we submitted we guaranteed to the railroads in order to stay abreast with the modern type of equipment that the railroads were coming out with, that we would replace these buses every 30 months with new vehicles in order to conform with the new design and the new effort on the part of the railroads to regain passenger traffic.

[1] This number refers to material filed by Mr. Keeshin with the subcommittee and is not to be confused with the officially numbered exhibits mentioned elsewhere in this testimony.

PLAINTIFF'S EXHIBIT 62 (Continued)

I have a letter here, also, from the Federal Civil Defense Administration complimenting us when we finally accomplished and got a 2-way radio control which carries a beam of 53 miles from the Loop to within any radius of the outskirts of Chicago, in which we can communicate with these cars without going through a radio station, direct between cars from any railroad station to a distance of 53 miles, covering any of the highways.

The CHAIRMAN. That may be filed as an exhibit for the inspection of the committee and not for the record at this time.

Are any of those originals?

Mr. KEESHIN. Yes, but——

The CHAIRMAN. All right, you may withdraw the originals and submit copies if you desire.

Mr. KEESHIN. Yes.

I also have another factor in my proposal that I submitted for the railroads, and I guaranteed to the railroads a fixed guaranteed contract rate for 5 years with a graduating scale for so much each year. In order to do that, I had to sit down and negotiate a labor contract with the Teamsters Local 705, in Chicago. I have a copy of the contract here with the union, which is a 6-year labor contract that I would like to file.

The CHAIRMAN. It may be filed.

Mr. KEESHIN. And because of that, I in turn was able to give to the railroads a guaranty of rate showing a 5-year contract with an adjustment of wage scales each year for the next 3 years. The only basis of speculation in this contract was the gamble on my part as to any possible inflation of gasoline and tire costs and other materials, but insofar as our wages are concerned my contract with the railroads increases automatically each year as to the increase I give to my men.

This is an uncancelable contract on the part of the unions.

The CHAIRMAN. That may be filed.

Mr. KEESHIN. This is a copy of the original contract that was signed by the 21 railroads, and by myself, and Mr. Padrick as chairman of the Western Railway Association.

The CHAIRMAN. All right, it may be filed.

Now, does that cover all of your documents?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. All right, Mr. Kennedy, proceed.

Mr. KENNEDY. As I understand it, Mr. Keeshin, you were going to form a new company or corporation to handle this contract?

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. And you did form a corporation to handle it?

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. What is the name of that?

Mr. KEESHIN. The Railroad Transfer Service, Inc.

Mr. KENNEDY. What is your relationship with Mr. Hugh W. Cross?

Mr. KEESHIN. I have known Hugh W. Cross prior to the time that he became Lieutenant Governor of our State, back at the time he was president of our senate.

Mr. KENNEDY. Have you been close friends?

Mr. KEESHIN. Well, I would say we have been rather friendly.

Mr. KENNEDY. How friendly?

Mr. KEESHIN. When you say "close friends"——

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KENNEDY. Do you visit in one another's home, for instance?
Mr. KEESHIN. No; he visited my home once, and I visited with him here in Washington.
Mr. KENNEDY. Did you visit at his home?
Mr. KEESHIN. Not at his home here in Washington—I visited him in his offices.
Mr. KENNEDY. You came to his office?
Mr. KEESHIN. I visited with him when he was in our capital in Springfield.
Mr. KENNEDY. At his home?
Mr. KEESHIN. No, sir.
Mr. KENNEDY. Have you ever visited at his home?
Mr. KEESHIN. No, sir.
Mr. KENNEDY. Has he ever visited at your home?
Mr. KEESHIN. Yes, sir.
Mr. KENNEDY. When was that?
Mr. KEESHIN. In 1954.
Mr. KENNEDY. What month?
Mr. KEESHIN. I wouldn't remember that. That was some time in 1954, at the time I was attempting to buy the Chicago West Town bus lines, and at that time that company was in receivership, and I had attempted to buy it, and submitted an informal bid for $350,000 for a bus line that operates locally within the suburbs around Chicago, and I happened to mention to him that I would like very much if he could come in. This was some time in 1954. I wanted him to look the thing over, and he did come in one Sunday, and I met him, and we rode around through the garage in the area where this Chicago West Town bus line was served, and when we got through we stopped off at our home and visited with my wife, and then I brought him back to the Loop.
Mr. KENNEDY. What is it that you wanted him to look over?
Mr. KEESHIN. I wanted his advice and guidance as to what he thought about this bus operation, being that he was well acquainted with the situation around Illinois. At that time I suggested to him that if I was successful in getting this company and if he had contemplated leaving Government service as was commonly known, that I would like very much if he cared to, to consider, if I were successful, to come in and head up this company.
Mr. KENNEDY. This was a bus company around Chicago?
Mr. KEESHIN. The Chicago West Town Railways.
Mr. KENNEDY. And you mentioned to him at that time that you would like to have him come in and head that company up?
Mr. KEESHIN. If I was a successful bidder, and if he decided to leave the Government service, of course.
The CHAIRMAN. Were you the successful bidder?
Mr. KEESHIN. No, sir.
The CHAIRMAN. That deal did not go through?
Mr. KEESHIN. No, sir.
The CHAIRMAN. So whatever you had to say to him about that, didn't materialize?
Mr. KEESHIN. No, sir.
Mr. KENNEDY. He came to your home, and was his wife with him at that time?
Mr. KEESHIN. No; she was not with him at that time.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KENNEDY. Now, have you seen each other or talked to one another since December of 1954, when you first submitted your bid on this transfer contract in Chicago?

Mr. KEESHIN. I had seen him, I believe, here in Washington and I don't remember just about when. It was some time in April or thereabouts. I believe it was April, but it could be May.

Mr. KENNEDY. Is that the only time you have seen him?

Mr. KEESHIN. Well, from that time on, because I had been out of the country, and I had been in Honolulu for several weeks, and I did not return back until the last week of March.

Mr. KENNEDY. Have you seen him since April to this time, to now?

Mr. KEESHIN. The last time I had seen him was in September in Chicago, when he came in to attend a dinner, testimonial they had given for Senator Dirksen.

Mr. KENNEDY. So since December of 1954, up to today, you have seen him twice, is that right?

Mr. KEESHIN. I have seen him several times.

Mr. KENNEDY. Would you relate when you have seen him, and what the circumstances were?

Mr. KEESHIN. I don't quite remember. I have seen him in Washington here I would say 4 or 5 times, possibly 3, and I don't recall now exactly how many times I have seen him.

Mr. KENNEDY. Where have you seen him?

Mr. KEESHIN. Here in his offices at the Commission, and I have seen him in Chicago. He was in Chicago some time in, I believe it was late in July. I talked with him prior to that several times, and in fact, I talked with him during June, and——

Mr. KENNEDY. What do you mean, you talked to him?

Mr. KEESHIN. On the phone. I called him at the time I submitted—or told him about this contract, and when there was a question that had been raised by my competitor who attempted to bring out the facts that I was not financially able to handle this contract if it was given to me, I then went to my bank and I was quite proud when I received a letter of credit that I could submit to the railroads. I knew then that the railroads were checking up on my financial credit, and when I did get my letter of credit from my bank which clearly stated that my credit was good up to the sum of $500,000 without collateral I was quite proud of that.

I know he was one of the fellows that I called to tell, as well as a number of other friends of mine, and I submitted that letter to the railroads as to my credit. I knew that they had been checking up on my credit and I might also say that I talked with him several times about this contract as I did on other occasions. We had conversations in the past politically, and I mean his aspirations were always either to go back, and—well, I would say back in politics in Illinois, and I discussed with him many times the campaign of our present Governor, and I also might say this for the record: That the only time I discussed with him a matter pertaining to my own company, namely the Conklin Truck Lines, was that we had filed for temporary authority of a truckline operating up through Rinelander and Eagle River and all, and because of the lake territory being unable to serve all of the routes designated we had filed for temporary authority to serve for the summer months all of the Vilas and Onid Counties in order to get away from finding out whether we were on

PLAINTIFF'S EXHIBIT 62 (Continued)

this route at the right time or not. We filed to ask for 125 days' temporary authority.

Now, the common practice in the motor carrier field is that any carrier will file under an emergency application when he can get affidavits and witnesses who will testify that they wanted this service and this was just for the summer season only, and when we filed it and submitted it, I did call him several times on that, and that is the only time that I ever called him to intercede on a matter for me, and when we got all through we finally got 45 days.

The CHAIRMAN. What year was that?

Mr. KEESHIN. 1955. This is during this past summer, during May and June, and all of the way up into July. When we got 45 days I expressed to him my complete disappointment regarding that situation.

Mr. KENNEDY. You talked to him 4 or 5 times in person at his office at the ICC, and you saw him once out in Illinois at this dinner in September, and how many times——

Mr. KEESHIN. You said the last time. I said the last time I had seen him in Illinois was on September 12, when he came in to attend the testimonial for Senator Dirksen.

Mr. KENNEDY. Did you see him any other time?

Mr. KEESHIN. I saw him once before that in the summer.

Mr. KENNEDY. Where?

Mr. KEESHIN. In Chicago.

Mr. KENNEDY. Where in Chicago?

Mr. KEESHIN. He came into Chicago, and I don't know whether he was on his vacation or not, and he phoned me, and I met with him, and in fact, I prevailed upon him to come up to my office—he had never been to my office—and then I met with him, and I was his guest at the Union League Club for lunch.

Mr. KENNEDY. What was the purpose of the telephone call? You don't have to give the witness the answers, Mr. Meserow.

Mr. KEESHIN. What was that? I didn't hear that, sir. Will you repeat the question, please?

Mr. KENNEDY. Why did he telephone you at that time?

Mr. KEESHIN. We had been friends for a long time, and I discussed with him many times, many situations, politically and otherwise, and he at that time seemed to be interested when I had hoped to get that West Town Railway thing, and while we never arrived at anything——

Mr. KENNEDY. You hoped to get what?

Mr. KEESHIN. I had hoped at that time prior to that to get the Chicago West Town bus line.

Mr. KENNEDY. Now, this is in September—or when is this—is this in 1955 we were talking about?

Mr. KEESHIN. I am talking about when I had lunch, and you asked me why he phoned me, and that was during the summer.

Mr. KENNEDY. Of 1955?

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. I thought this bus question came up in 1954.

Mr. KEESHIN. I am just bringing up, that being as we were friends, he came into Chicago, and phoned me at my office.

Mr. KENNEDY. Did you discuss the bus question again?

Mr. KEESHIN. Oh, no.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KENNEDY. All right. Go ahead, please.

Mr. KEESHIN. Merely on a general friendship basis, and I asked him if he had ever been to my office, and I would like very much for him to come up and then I would go and have lunch with him, and I did go and have lunch with him at the Union League Club, which he paid for.

Mr. KENNEDY. Did you see him again?

Mr. KEESHIN. I saw him again——

Mr. KENNEDY. When he was in Chicago at that time, when did you see him?

Mr. KEESHIN. Well, I just stated I saw him when he was in Chicago, and I had lunch with him, and he came up to my office.

The CHAIRMAN. Let me inquire at that point whether the truck deal, your offer to buy this truck company, or this bus line, whether that had already fallen through?

Mr. KEESHIN. That had already fallen through.

The CHAIRMAN. That was all passed at that time?

Mr. KEESHIN. Yes; they had fallen through late in 1954.

Mr. KENNEDY. Did you see him any other time while he was in Chicago on this visit?

Mr. KEESHIN. Outside of that visit I saw him once later in the summer, and he and his wife were up at his summer home, and he drove up to my home at that time. I had a friend of mine there, and he came up to see him.

Mr. KENNEDY. Who was the friend?

Mr. KEESHIN. One of your colleagues who stopped at my home with his wife, Senator Dirksen. He did drive up from his summer home and visit with the Senator for a couple of hours, and I did see him there for a little while, and he chatted with the Senator and then drove back later that afternoon.

The CHAIRMAN. Just to get the record straight, he and Senator Dirksen you assume are friends, politically and otherwise?

Mr. KEESHIN. Dating away back.

The CHAIRMAN. And there is nothing unusual in him wanting to see Senator Dirksen?

Mr. KEESHIN. It has been pretty common, if I may say, even throughout Washington here, that he has been wanting to step aside from Government service for more than the past 2 or 3 years, and he has been anxious to get back into politics, I guess, and he at one time tried to get back to be a candidate for public office again in Chicago.

The CHAIRMAN. All I am trying to establish is that so far as you know, his visit with Senator Dirksen had no relation to this particular contract or his working for you or not working for you.

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. So far as you know, did it have or didn't it have?

Mr. KEESHIN. It had nothing to do with it.

The CHAIRMAN. I have a lot of people come and visit me as Senator, or who are friends, and they may see me at someone else's home, but the point is that you are not identifying Senator Dirksen in any way as connected with this transaction?

Mr. KEESHIN. Not a bit, Senator.

The CHAIRMAN. All right, I just wanted to get the record clear.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KENNEDY. Did you see him on other than these two occasions, when he came to Illinois, during this visit, did you see him on other than these two occasions?

Mr. KEESHIN. No, sir. I don't recall positively.

Mr. KENNEDY. Do you think that you might have?

Mr. KEESHIN. It could be a possibility, and I see a lot of people, but I don't recall having seen him more than twice on those occasions.

Mr. KENNEDY. Do you think he might have come to your office on another occasion?

Mr. KEESHIN. Only once—that much I can assure you.

Mr. KENNEDY. How many times do you think that you talked to him on the phone when he was out there in Illinois?

Mr. KEESHIN. That is hard to say—a number of times, numerous times.

Mr. KENNEDY. What were you talking about numerous times, when he was in Illinois?

Mr. KEESHIN. Matters personal, and politics, and a lot of things. One discusses a lot of things with a man in public life, and a political man and a man who was formerly lieutenant governor, and we talked about a lot of his old appointees, and people, as to what the possible future was of the Republican situation in Illinois.

Mr. KENNEDY. You have been active in politics yourself?

Mr. KEESHIN. I have been, sir, very active. I had to be and be in the transportation business.

Mr. KENNEDY. And you were just discussing personal matters with him?

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. Now, these are the visits that you have had with him. What about the telephone calls that you have had with Mr. Cross, either his calls to you, these long-distance calls from Illinois to his office here in the ICC or his home? Have there been many of those?

Mr. KEESHIN. Yes, I made a lot of calls, and he called me back when I would ask him to call me back, as a favor. I know calls were made to my home when my wife had been ill, and I know his wife made a number of calls to my home. And I might also say this, that during this period of July, you will find a number of calls in June and July were made regarding this temporary authority, because I felt that in order to serve all of Island County and Oneida County, when we had a bunch of people there with summer homes and cottages, who wanted their freight delivered, and we had no legal right to deliver it, and we were waiting for this temporary authority, and for some unknown reason it was just delayed, and I finally called and told him, and I said "If anybody filed without any affidavits, and just a temporary, he would normally get 120 days; what is holding us up?" I want to say this for the record, that this is the first time in all of the years he had been with the Commission that I asked him for something personally, and then I wound up getting it only for 45 days.

Mr. KENNEDY. Did you find out why your temporary authority had not been granted immediately? Weren't there some safety regulations, or something?

Mr. KEESHIN. They raised the question on that, and I wrote back to the Motor Carrier Division of Safety, and stated the facts, that here, based on the number of millions of miles we had operated, and that re-

PLAINTIFF'S EXHIBIT 62 (Continued)

cently we renewed our insurance with the same carrier, if our accident ratio was bad, we surely could not have gotten a refund and a reduction in our rates, but we did. We got a credit of almost $40,000 or so, in a reduction under our retrospective premium.

Mr. KENNEDY. I don't want to get into any extraneous matter, but as I understand, you requested the temporary authority on May 25, and that this was temporary authority granted to you on June 7, 1955, with the understanding that you would comply with the safety regulations, which you had not done in the past; in addition that you should maintain daily driver logs and that you had not complied with that regulation.

Mr. KEESHIN. That is what one of their inspectors said.

Mr. KENNEDY. And then on July 25, the temporary authority of 60 days was granted to you?

Mr. KEESHIN. That was in August, when most of the summer was over.

Mr. KENNEDY. And it was granted to you for 60 days only, because you wanted it for the summer?

Mr. KEESHIN. It was only granted to us for 45 days, and not 60 days.

Mr. KENNEDY. It was granted until September 17, I believe.

Mr. KEESHIN. After all, we are all through serving that area and that country right after Labor Day, and we needed it primarily during June and July, and when they finally did give it to us, half of the summer was over, or two-thirds of the summer, and then it was only 45 days and not 60 days.

Mr. KENNEDY. The reason they did not give it to you was because you had not complied with the safety regulations.

Mr. KEESHIN. That is what one of their inspectors said.

Mr. KENNEDY. That is all.

Now, you talked to Mr. Cross on a number of different occasions by long-distance telephone; is that right?

Mr. KEESHIN. That is right.

Mr. KENNEDY. And what was the purpose of these calls?

Mr. KEESHIN. To see what he could do to expedite it, to expedite this temporary authority, because it is common practice in our business, that anyone who files a temporary authority under an emergency automatically gets authority, and we only asked for it during the summer months.

The CHAIRMAN. Let me ask you a question to get the record straight.

When was this application filed for this temporary authority?

Mr. KEESHIN. I don't remember now.

The CHAIRMAN. Was it May 25? Would that be the correct date?

Mr. KEESHIN. I would say so.

The CHAIRMAN. And when was the temporary authority granted?

Mr. KENNEDY. The record shows it was granted June 7, 1955, with the understanding that it would not go into effect until Mr. Keeshin complied with the safety regulations.

The CHAIRMAN. From May 25 to June 7?

Mr. KEESHIN. We didn't get it June 7, I beg to differ with you.

The CHAIRMAN. I am just asking on the basis of the information in the file here.

Mr. KEESHIN. You have the date there, and you mentioned that.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KENNEDY. I said it came into effect, and you were granted it on June 7 with the understanding that you would comply with the safety regulations, and you complied on July 25, and that was the date that it went into effect.

Mr. KEESHIN. In other words, as far as we were concerned, they never gave it to us until July 25, and extended——

Mr. KENNEDY. That is when you complied with the safety regulations?

Mr. KEESHIN. We later proved, and we have the records to show that we have one of the finest safety records in the United States.

Senator JACKSON. Was it a mistake?

Mr. KEESHIN. I believe so, under our basis.

Senator JACKSON. You didn't have to change anything, and you didn't have to comply with it?

Mr. KEESHIN. No, sir, they came in there, and their inspectors came into our Toledo offices and went through our offices and were perfectly satisfied, and when they got through, they gave us a compliment.

I would like to correct one thing. Any order under the temporary authority that is issued by the Commission, if I can recall correctly, there is always a provision where it provides that you must comply with the safety requirements.

Mr. KENNEDY. Your statement is that you made absolutely no changes, is that correct, between these dates of June 7 to July 25?

Mr. KEESHIN. What do you mean?

Mr. KENNEDY. There wasn't anything that you had to comply with?

Mr. KEESHIN. Their inspectors came in.

Mr. KENNEDY. Did you have to change any of your procedure?

Mr. KEESHIN. Well, let me say this. We made running tests between various points, and we clocked the runs. At one time their inspector claimed that we were running too fast, and we made various test runs between these points. Then they came back in after we made these various test runs and went through it, and then insisted that we make some more test runs. Then they had raised the question that our logs that we were keeping were not in the same manner that they should be kept, and they wanted it kept in another way, although for years and years since the Motor Carrier Act went into effect we had always kept it in that manner.

Mr. KENNEDY. You said there were misstatements in your logs?

Mr. KEESHIN. They didn't say misstatements.

Mr. KENNEDY. What did you do? Did you rectify the situation in your logs?

Mr. KEESHIN. Our people went along with whatever they wanted and rectified it.

Mr. KENNEDY. That is what I wanted to get. So that ultimately, on July 25, you had made these various corrections, and they granted you the temporary authority; is that correct?

Mr. KEESHIN. I would say that that is when we got it.

The CHAIRMAN. I have 1 or 2 questions. Are you implying that the telephone calls you may have had with Chairman Cross, these long-distance calls from you to him and his return calls to you, all pertained to this temporary application?

Mr. KEESHIN. No, sir.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. Did a majority of them pertain to that?

Mr. KEESHIN. A majority of them pertained to that; yes, sir

The CHAIRMAN. How many calls do you say that you made between May 24—I believe your application was not filed until the 25th—from beginning May 25 to July 25, when it actually went into effect? How many calls would you say were made, either to or from?

Mr. KEESHIN. That I would say would be awfully difficult for me to answer, because I do make an awful lot of calls all the time.

The CHAIRMAN. Prior to that, had you had any occasion to call him about anything else prior to the time you filed your application on July 25?

Mr. KEESHIN. I have always called him on various personal matters.

The CHAIRMAN. What other matters would you be calling him about prior to that time, if you can recall?

Mr. KEESHIN. I called him prior to May.

The CHAIRMAN. Prior to May 25 when you filed your application?

Mr. KEESHIN. I probably called him on some personal matters pertaining to the political situations, and he would call me, or his wife would call to talk to my wife. I also called him at the time when I had filed my application or my bid with the railroads, to tell him what progress I was making, and so that as a friend, I wanted him to know just how we were going along.

The CHAIRMAN. You are speaking now of your application to the railroad, or are you referring to this contract that you received from the railroads to handle these things?

Mr. KEESHIN. I talked to him about that contract, also, that I put in with the railroads; yes, sir.

The CHAIRMAN. And you talked to him about that prior to May 25?

Mr. KEESHIN. Possibly prior, or possibly after, both times. I wouldn't know.

The CHAIRMAN. When was that contract finally granted? I don't recall.

Mr. KEESHIN. June 13.

The CHAIRMAN. On June 13?

Mr. KEESHIN. Yes.

The CHAIRMAN. Prior to June 13, beginning with March, do you know how many calls you had between you and Mr. Cross?

Mr. KEESHIN. It would be hard for me to answer that.

The CHAIRMAN. Some of those calls were pertaining to this particular contract?

Mr. KEESHIN. I might have made some calls pertaining to this particular contract; yes, sir.

The CHAIRMAN. In what respect would it be necessary, if the ICC has no jurisdiction over this contract—what would be the occasion for you to call Mr. Cross about it?

Mr. KEESHIN. Well, I have always had the practice of consulting with him on various things, and the thought there was that I wanted him to know about it. I wanted his views as to the fact that I was going into a different phase of this business of mine, and like anything else, being he is my friend, if an occasion arises, that he could pass a good word for me, naturally I would hope he would do it.

The CHAIRMAN. Then you had in mind to solicit his assistance with the railroads in securing the contract.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. No, sir, Senator.

The CHAIRMAN. Just a moment now, Mr. Counsel, I think that if I ask a question that is not pertinent, then you may say something to me about it, but let us let the witness testify.

May I inquire now, as I understand it, you agree that you did talk to him about this particular contract and that you had in mind that if he could say a good word for you with the railroads with whom you were negotiating, and to whom you had submitted your bid, you hoped he would do it?

Mr. KEESHIN. If the occasion arose, yes, sir, and I never asked him to do it.

The CHAIRMAN. You did not ask him to do it, but that was some of the purpose of your call?

Mr. KEESHIN. That is right.

The CHAIRMAN. And do you know that he did carry out that purpose?

Mr. KEESHIN. That I do not know.

The CHAIRMAN. You haven't talked to him about that?

Mr. KEESHIN. No, sir.

The CHAIRMAN. He didn't call you and relate to you what he was doing in that connection?

Mr. KEESHIN. No, sir; he never did.

The CHAIRMAN. Did he ever at any time tell you that he had interested himself in it?

Mr. KEESHIN. No, sir. I mean I didn't know that he had talked to any particular people about that.

The CHAIRMAN. In the course of these conversations—now that is pretty important, remember you are under oath. I am not saying that you are inaccurate about it. But the question is direct and positive now. In the course of these telephone conversations, or any visit that you had with Mr. Cross during that period of time, did he apprise you of the fact that he was complying with the purpose, partially the purpose, according to your own testimony of your calls, by putting in a good word for you with the railroads with which you were negotiating? Did he apprise you of that fact?

Mr. KEESHIN. Never mentioned any particular railroad, and all he told me was that he hoped that I would be the successful bidder.

The CHAIRMAN. That is all he told you, and he didn't tell you what he was doing?

Mr. KEESHIN. No, sir.

The CHAIRMAN. Didn't tell you that he would do what he could?

Mr. KEESHIN. No; and he said if ever the occasion arose, he would pass a kind word for me.

The CHAIRMAN. He told you if the occasion arose he would pass a kind word for you?

Mr. KEESHIN. No, sir.

The CHAIRMAN. Did he say that he would make such an occasion and do you know that he did make such an occasion, and that he did pass the word?

Mr. KEESHIN. I have heard about it since.

The CHAIRMAN. But you never knew about it?

Mr. KEESHIN. Not at the time.

The CHAIRMAN. Let me ask you further, now, you had prior to that had an understanding with him that if your purchase of this trucking system went through——

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. The bus system.

The CHAIRMAN. You would like to have him come into your company and head that particular company, if you purchased it?

Mr. KEESHIN. That is right.

The CHAIRMAN. That was prior to this transaction?

Mr. KEESHIN. That is right.

The CHAIRMAN. Now, then, following up to this transaction, and having not succeeded in the other, what conversation did you have with him with regard to heading up this company or coming with you if this transaction went through?

Mr. KEESHIN. This transaction itself was too small to have a man of his caliber come with me in that particular case.

The CHAIRMAN. But you have other large interests?

Mr. KEESHIN. That is right.

The CHAIRMAN. And you might need some additional help if you take on this contract?

Mr. KEESHIN. No.

The CHAIRMAN. I am just asking the point blank question. Did you have any understanding with him or did you appraoch him with respect to this contract that if you succeeded in getting this contract, that he was to come with your company?

Mr. KEESHIN. Not in this particular contract; no, sir.

The CHAIRMAN. You did in the other.

Mr. KEESHIN. I did in the other.

The CHAIRMAN. But not in this.

Mr. KEESHIN. And I might also say that at the time that contract failed, when he was talking about retiring from Government service, I did leave him with this thought in mind, that if at any time he decided that he wanted to get out of Government service and felt that he wanted to get into business and not in politics, to be sure and let me know, that I thought that I would always be able to sit down and work out something with him.

The CHAIRMAN. In the course of your negotiations, or in the course of the companies consideration of your bid, the railroad companies consideration of your bid, for this transfer service, did you again remind him or did he have in mind from your previous conversation and did you understand that, that he could come with your company if you were successful in this matter?

Mr. KEESHIN. At no time in the course of negotiation of this railroad contract was there any specific mention made that he would come with my company.

The CHAIRMAN. Was there any general statement or understanding about it?

Mr. KEESHIN. Merely that the original views that he had from me, that if at any time he wanted to get out of Government service, and if he decided that he wanted to go into business and not in politics, or go back into the practice of law, I would be very happy for him to let me know if he would entertain a proposition so that he could come with one of my companies.

The CHAIRMAN. Now, on that basis, I think that you know that there were rumors to the effect or statements being made to the effect that if you secured this contract, Mr. Cross was to leave the ICC and come with your company. You knew about those rumors; didn't you?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. I had heard about them later, and you hear about those kind of rumors; yes, sir.

The CHAIRMAN. I am not referring to them as anything but rumors——

Mr. KEESHIN. That is right, I heard about those rumors.

The CHAIRMAN. I think that is pretty well established, that such talk was prevalent.

Mr. KEESHIN. Those rumors were established by our competitors, then, the Parmalee people, and I knew about that, and they were going around and putting in a lot of threats, and a lot of pressure, and they came on down as to what was going to happen to me, and there were a lot of things in the transportation business. You know, Senator, it is not a mild-mannered business. I have had to fight my way through 40 years in this business. I built it up by its bottstraps.

The CHAIRMAN. And the chairman is perfectly willing to give you time to make any statement about that that you want. I want to get right down here to the cold facts now about this particular transaction, and I have asked you in as direct language as I know how to put it, whether there was any agreement express or implied between you and Mr. Cross relative to this particular contract, that if you succeeded in getting it, he was to come with you, either in this company or in all of your companies.

Mr. KEESHIN. No, sir. I merely want to supplement that, though, that the original understanding that he had early in 1954 when we failed on getting the West Town, and when he talked repeatedly about resigning and going either back in law practice or what not, I told him then that if at any time he wanted to go back into business and wanted to become associated with me, I would be very happy to have him associated with me.

The CHAIRMAN. That understanding had never been rescinded, and that was still so far as you know, the understanding between you?

Mr. KEESHIN. That is right.

The CHAIRMAN. Was there any reference——

Mr. KEESHIN. I wanted to say that during the time I got this contract——

Mr. JACKSON. I think the record should show that counsel from time to time has——

The CHAIRMAN. The Chair is very lenient in these matters, but after all now counsel knows we just want the witness to testify.

Mr. MESEROW. It was my understanding that I could advise the witness, and I am trying to bring out the facts.

Senator JACKSON. Advise the witness on what?

Mr. MESEROW. On bringing out facts in this witness.

Senator JACKSON. You are not to give testimony.

The CHAIRMAN. If you think that any question is asked that he should not answer, or that it would be improper for him to answer it or he should stand on some rights that he is entitled to under the law and the Constitution, you may advise him not to answer that question, but not advise him as to the testimony that he should give.

Now, if we overlook something that you think is pertinent, as I mentioned to you before, if you will acquaint the Chair with the question you would like to have asked, we will bring it out. But in the courtroom, when your witness is testifying, you can't go up and whisper to him every few minutes.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. MESEROW. There is only one question I would like to have you ask if you would, Senator, to clarify the trend of your questioning. That is to ask Mr. Keeshin whether or not he had any agreement or a new agreement with Mr. Cross with respect to or during the term of the negotiations of this railroad contract.

The CHAIRMAN. That is exactly what I am trying to bring out, and I am trying to ask it, and I thought that I had asked it before.

First, as I understand it now, and we will try to hurry along, and I don't want to belabor this thing or keep you here unduly, but as I understand it, you had had an agreement or an understanding with Mr. Cross that if you made this other purchase, the purchase of the buslines, he could come with your company if he desired to do so?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. That had been repeated in this fashion, and in a general fashion, that at any other time he wanted to leave the Government, you would like for him to consider coming with your company?

Mr. KEESHIN. That is right, but that was prior to my getting this contract and at no time was it the purpose of this contract.

The CHAIRMAN. That was prior to the time of your getting this contract?

Mr. KEESHIN. And I never rescinded that thought in his mind.

The CHAIRMAN. That was still an understanding between you in the course of this contract?

Mr. KEESHIN. That is right.

The CHAIRMAN. Then would you say that is why Mr. Cross interested himself in trying to help you secure the contract, if he did so?

Mr. KEESHIN. I don't believe so, and I want to say this clearly, Senator, that I have been in the transportation business for 40 years, and I have been around politically, and I have been involved in a lot of matters here in Washington, and I have dealt with people all of the way back from 1939, I might say, to the early days when I was called in and dealt with the White House through President Roosevelt on quite an important task in the Far East, and all.

I have built up the largest truckline in the United States, and I didn't need any Commissioner, and I started my dealings in the old days with Joe Eastman, in the development of the Motor Carrier Act, and it was nothing uncommon for Joe Eastman to recommend me to certain friends of his, or to Commissioner Rogers, or other commissioners, and it has been a sort of known fact.

I might say that when you brought up the question about rumors floating around, certainly in our business the attorneys representing those people—before I even submitted my bid I want you folks to know this, it wasn't a question that I had to take this company. I have got, thank God, the Good Lord has been good to me, and I have enough companies, and I am successful in my companies, and it wasn't a matter of life or death. And when this thing first came to me, I think that I was most gracious, if I do say so, I went to Mr. Marcom's official, Mr. Ben Samuels, of the Yellow Cab Co., one of his affiliates, and I don't think many competitors would do it, and I sat with him, and I said "Now Ben, the railroads have been in to see me, and I don't care about this contract, I think that you ought to tell Mr. Marcom to do something about this equipment. It is a disgrace to

PLAINTIFF'S EXHIBIT 62 (Continued)

Chicago, the kind of equipment, and the railroads have been faltering in service. Now, I think that you ought to tell Mr. Marcom for me that I am in the freight business and I don't want to get into this and I think he ought to do something," and Mr. Samuels turned to me, and he said, "You are wasting your time."

I said, "Now look, these railroads aren't fooling, and they have gone out to a lot of people, and they are insistent that I make a study." Once I start making a study, I am not going to back down out of it, because I knew that once I get involved in this thing, it is going to be a fight.

And now what happened? I was laughed at, and I was told that I didn't have a chance. Well now, the records will show, Senator, that my life has been threatened, they have threatened and called my home up and scared the wits out of my wife, and I have been called, and I have been brought up to testify before the Federal grand jury in Chicago, as to my threats on my life, and the things and sabotage that have happened to my equipment, and things that have happened to my equipment, 25 or 30 years ago was considered normal. I have had airlines cut, I have had electric lines cut.

Senator ERVIN. I respectfully suggest we ought to get back to what we are investigating.

The CHAIRMAN. I may say this, that the Chair tries to be liberal in these things, but I don't want to deny any witness the right to say anything he thinks pertinent, and I may say that I think we can shorten this from the Chair's information, I don't necessarily regard your competitor very highly, and we are not primarily concerned with whether you have the contract or didn't get the contract, or what you may have done to get the contract other than as it is related to Mr. Cross.

Mr. KEESHIN. I would like to say, Senator, that we got the contract on our merits, and I gave the railroads the finest of equipment, and the finest that money could buy, and I gave them a service. You take for example another thing that I put in that I think was quite a selling point, and that was shifting their baggage not twice a day where most of the baggage would lay around 2 or 3 days before a man got it when he got off the train, but I gave them 4 transfers a day in that shuttle system.

The CHAIRMAN. Now, you have improved the service according to your testimony and we don't need to go into all of the details, and that may be conceded by every witness that testified. That was not the point that the committee is primarily concerned about. But you said, and this has some significance, you said that after this conversation with Representative Marcom, or a high official in his organization or in his companies, when he told you that you were just wasting your time, that then you determined to fight.

In determining to get the contract, the presumption arises or could arise, from what you have already testified, that you undertook to secure the influence of the Chairman of the Interstate Commerce Commission to help you get that contract and that he did use his influence to help you get the contract.

Mr. KEESHIN. No, sir, Senator. It was merely a recommendation that as you go along in business when people go out, you go to numerous people because I knew that the railroads were going to check on

PLAINTIFF'S EXHIBIT 62 (Continued)

me and they went to various sources, and I had hoped that if they did go to him he too would help recommend me.

The CHAIRMAN. All right. Now again I will ask you, Do you know what efforts he made to help you get the contract?

Mr. KEESHIN. No, sir.

The CHAIRMAN. Did you know at the time that he was making an effort to help you get the contract?

Mr. KEESHIN. No, sir.

The CHAIRMAN. He has never told you that himself?

Mr. KEESHIN. No, sir.

The CHAIRMAN. You have never talked to him about what effort he may have made to help you get the contract?

Mr. KEESHIN. I have not talked with him about that.

The CHAIRMAN. After securing the contract, did you not talk with him and discuss whom he may have talked to and what he did to assist you?

Mr. KEESHIN. I did not talk with him as to who he discussed it with at all.

The CHAIRMAN. Did you talk to him as to whether he had done anything or not to help you?

Mr. KEESHIN. When I got the contract.

The CHAIRMAN. What did he tell you he had done?

Mr. KEESHIN. When I got the contract, I called him and thanked him for what help he did give me, if he did give me any, and I said that I am very happy that I got this contract and I want you to know that I appreciate if you did put any effort forward to recommend me, the same as I called him, I called other friends of mine, and there were numerous other people that I did call in which I expressed my thanks and appreciation.

The CHAIRMAN. Then, in calling him, you recognized that he possibly had helped you because you had requested him to help you?

Mr. KEESHIN. Possibly he did.

The CHAIRMAN. And possibly he had helped you and so when you got the contract, you called him and thanked him for his assistance?

Mr. KEESHIN. Yes, sir.

Mr. MESEROW. In fairness to the witness and to Mr. Cross and to the committee, I think that we should be a little more explicit, perhaps, in your questions on defining the word "help." Now, there are all degrees of the word "help." I know what the witness means, but I don't think the committee does.

The CHAIRMAN. Just a moment. We have testimony here as to the character of the help, and if the testimony we have before us is correct, there could be no doubt about the interpretation of the word "help," as I am using it.

Mr. MESEROW. That may be within the knowledge of the committee, but it may not be within the knowledge of the witness.

The CHAIRMAN. I have asked him what Mr. Cross did insofar as his knowledge is concerned, and I have asked him what Mr. Cross reported to him, and he says now that after he got the contract he called Mr. Cross and thanked him for whatever help he gave, if he gave him any. So he obviously had in mind that he possibly had received help from Mr. Cross, or he would not have called him to thank him for it.

I think that is perfectly obvious to you and me as attorneys.

So let us proceed now.

PLAINTIFF'S EXHIBIT 62 (Continued)

Are there any other questions?

Senator JACKSON. I just had a couple of questions.

Did you ever renew this offer of employment after, say, December of 1954, at any time with Mr. Cross?

Mr. KEESHIN. No, sir; just in generalities, when I got back, and he still talked about the possibility of resigning from the Commission.

Senator JACKSON. Did you ever mention to anyone other than Mr. Cross—I will withdraw the question.

After December of 1954, did you, Mr. Keeshin, at any time ever mention to anyone else that you might employ Mr. Cross in any of your business firms or all of them?

Mr. KEESHIN. I don't recall mentioning that to anybody.

Senator JACKSON. To the best of your knowledge, after December of 1954?

Mr. KEESHIN. To the best of my knowledge; no, sir.

Senator JACKSON. Will you deny it?

Mr. KEESHIN. I say to the best of my recollection, I have made no statement to anybody that I contemplated employing him.

Senator JACKSON. You might have done that?

Mr. KEESHIN. I say to my best recollection, I don't know.

Senator JACKSON. Can't you give us a better answer?

Mr. KEESHIN. You go through discussions in business month after month, and you run into hundreds and hundreds of people, and as I said to the best of my recollection, no.

Senator JACKSON. Now, will you say categorically that after December of 1954, you at no time ever mentioned to Mr. Cross a reminder of his opportunity of employment with you?

Mr. KEESHIN. I could not say that, because in our conversations back and forth, of his constant wanting to resign from the Commission, where I might have tried to impress upon him that I thought he ought to stay with the Commission.

Senator JACKSON. In your many conversations subsequent to December of 1954, did you have the impression that Mr. Cross still understood that he might come with you or your firm or firms?

Mr. KEESHIN. I could not know what his impression was.

Senator JACKSON. Well, you say that you had a lot of conversations, and I take it that you admit that, after December of 1954?

Mr. KEESHIN. Well, I was away, and I didn't get back.

Senator JACKSON. I say after December of 1954, I understand your testimony, you were in Honolulu for a while, but after 1954 up to now, you had a lot of conversations with him.

Mr. KEESHIN. Yes, sir; I had a lot of conversations with him.

Senator JACKSON. And did you ever have the feeling then that he certainly did not think he had an opportunity of employment with you at some future date?

Mr. KEESHIN. We never got involved in that discussion.

Senator JACKSON. It was never discussed?

Mr. KEESHIN. No, sir.

Senator JACKSON. At no time?

Mr. KEESHIN. Not to my recollection, and now he has talked about going in other businesses down in southern Illinois.

Senator JACKSON. I am talking about your business.

Mr. KEESHIN. No, sir; not to the best of my ability.

PLAINTIFF'S EXHIBIT 62 (Continued)

Senator JACKSON. Now, I take it that at no time did Mr. Cross ever call you back and advise you that he had contacted any official in any of the railroads that were involved in the contract that you were interested in?

Mr. KEESHIN. I don't recall him ever mentioning that he had had any conference with any officials in my behalf.

Senator JACKSON. At no time did he ever report to you that he had talked to any railroad official in this connection?

Mr. KEESHIN. I can't recall him ever giving me that conversation on that.

Senator JACKSON. Well, you can remember.

Mr. KEESHIN. I have had all of my dealings with the railroads myself.

Senator JACKSON. But wouldn't you remember if he had called you up, and said, "Now, I have talked with Mr. Jones, or Mr. Brown, and there are many companies involved in this"?

Mr. KEESHIN. No, sir.

Senator JACKSON. The answer is that he never told you?

Mr. KEESHIN. No, sir.

Senator JACKSON. What impression did you have that he was to do for you after you had called him and discussed this matter of your submitting a bid to handle the passenger and luggage service?

Mr. KEESHIN. Well, it is a question of people coming in and out of his office, and naturally being that they knew he was from Illinois, they might be making inquiry as to the way Jack Keeshin operates.

Senator JACKSON. What people would be coming in?

Mr. KEESHIN. Various railroads.

Senator JACKSON. So you assumed that what would happen is that when these people would come in his office, or when he might be talking to them, he might put in a good word for you?

Mr. KEESHIN. Or they might ask him about me and I don't know.

Senator JACKSON. In connection with your proposal or proposals or any communication that you sent to this bargaining committee, the representatives of the railroads, did you at any time give Mr. Cross as a reference?

Mr. KEESHIN. No, sir.

Senator JACKSON. Then how in the wide world would they come to him?

Mr. KEESHIN. It is very simple. He is from Illinois, and a lot of people know he was our Lieutenant Governor, and the railroads are all centered in Chicago, and it is pretty common that he and I were old friends dating away back.

Senator JACKSON. They all knew that: didn't they?

Mr. KEESHIN. I would say it is general knowledge, being our Lieutenant Governor for 8 years in Illinois, and he was president of our senate.

Senator MCCARTHY. If they wanted to get——

Senator JACKSON. How long have you resided in Chicago and operated there?

Mr. KEESHIN. All of my life.

Senator JACKSON. All of your life?

Mr. KEESHIN. Yes, sir.

Senator JACKSON. Why would they come to Washington to get information about you?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. The same as they would come to Washington to get information about other things. They have gone to the banks, and they went to our manufacturers that I trade with, and they went to a lot of places to make inquiry about my performances and my ability to perform on a new type of business.

Senator JACKSON. This matter was not within the jurisdiction of the ICC; was it?

Mr. KEESHIN. No, sir.

(At this point, Senator McCarthy left the hearing room.)

The CHAIRMAN. I have 1 or 2 other questions here.

Did Mr. Cross tell you about having telephoned Mr. Simpson, president of the B. & O. Railroad on June 8 in your interest?

Mr. KEESHIN. No, sir.

The CHAIRMAN. I will ask you the positive question now.

Is it not true that on June 8, Mr. Cross called Mr. Simpson in your interest, and on the same day called you and made a report on that call?

Mr. KEESHIN. I don't know anything about him calling Mr. Simpson at all.

The CHAIRMAN. I have one other question. When did you call him after you were awarded this contract? You were awarded the contract on June 13, wasn't it?

Mr. KEESHIN. That is right, sir.

The CHAIRMAN. What time of the day did you know about the contract being awarded?

Mr. KEESHIN. I don't remember now just when I was given word on it.

The CHAIRMAN. Did you talk to Mr. Cross on that day?

Mr. KEESHIN. I wouldn't remember if I did, Senator.

The CHAIRMAN. You said that you called Mr. Cross to thank him.

Mr. KEESHIN. That is right.

The CHAIRMAN. How soon after the contract was awarded did you call him?

Mr. KEESHIN. I don't remember whether I called him the next day, or that night, or the day after, and it is hard for me to recall when I did call him.

The CHAIRMAN. Isn't it true that Mr. Cross called you on the 13th of June, instead of you calling him?

Mr. KEESHIN. I don't recall.

The CHAIRMAN. Now, did he call you to tell you that he had done the job, or did you call him to thank him for such help as he might have given?

Mr. KEESHIN. That is hard for me to say whether he called me but I know that I called him and thanked him, but just what day I called him, I could not answer that.

The CHAIRMAN. The records of the telephone company would reflect that call, I assume, would it not, if you called him?

Mr. KEESHIN. It might, depending on where I was, and whether I called.

The CHAIRMAN. Where did you call from? You are sure you called him—Where did you call him from?

Mr. KEESHIN. I wouldn't know.

The CHAIRMAN. Where were you when you got notice that the contract had been awarded?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. I was at Union Station.

The CHAIRMAN. Where?

Mr. KEESHIN. In Chicago.

The CHAIRMAN. Were you on your way somewhere, or coming back from somewhere?

Mr. KEESHIN. I suppose I was, the Union Station is the office where I meet with the railroads, and I was leaving there, probably, to come back either to my office or go back to the union office, and I don't recall.

The CHAIRMAN. You weren't on your way out of town?

Mr. KEESHIN. No, sir.

The CHAIRMAN. That is where the railroads have their offices, in Union Staion?

Mr. KEESHIN. Well, I——

The CHAIRMAN. And by being at the station, it would imply that when you learned about it, it wasn't that you were out of town. or that you were at the station for the purpose of taking a trip out of town?

Mr. KEESHIN. No, sir; this is where you meet with the railroads, at the Union Station, and I had come over from my offices, sir.

The CHAIRMAN. That is where the award was made?

Mr. KEESHIN. That is right.

The CHAIRMAN. Do you think that you called Mr. Cross that day?

Mr. KEESHIN. I could not say for certain whether it was that day, or the next day, or that night, Senator, I don't recall.

The CHAIRMAN. But you do not recall Mr. Cross calling you that day?

Mr. KEESHIN. I don't recall.

The CHAIRMAN. If he did call you that day, after the contract had been awarded, and after it had been announced, there would be no occasion for you to call him back to thank him; would there?

Mr. KEESHIN. That is right.

The CHAIRMAN. So if you talked to him that day, after the contract was awarded, on his call to you, then you probably thanked him when he called you.

Mr. KEESHIN. That could be, but I just don't recall that.

The CHAIRMAN. Is it not a fact that he called you that day, and told you that you were going to get the contract?

Mr. KEESHIN. No, sir; Senator, because my dealings were directly with the railroad committee, and there were 21 railroads sitting in that meeting, and I met with all 21 of them there.

The CHAIRMAN. At that particular time, that was the subject of any call you may have had with Mr. Cross?

Mr. KEESHIN. I couldn't answer that, because I would not know just exactly what the subject was. As I said, I called him sometime in the interim to thank him.

The CHAIRMAN. That is all for the present.

Senator ERVIN. You knew that Mr. Cross was somewhat unhappy with his work here and was contemplating returning to Illinois?

Mr. KEESHIN. That has been pretty common for the past 3 years, Senator.

Senator ERVIN. And you had assured him that any time he wanted to leave the Government employment, that you would be glad to offer him a position with some of your companies?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. If he wanted to go in business and not stay in politics, because he knew that anybody in politics could not be in business with me.

Senator ERVIN. But anyway, you knew that of course the railroads that you were seeking to contract with were subject to the regulation by the Interstate Commerce Commission, of which Mr. Cross was Chairman?

Mr. KEESHIN. Well, he was Chairman, yes; he became Chairman.

Senator ERVIN. Don't you know also that the railroads were subject to regulation by the Interstate Commerce Commission?

Mr. KEESHIN. Surely, and so am I.

Senator ERVIN. So you called the Chairman of the Interstate Commerce Commission and asked him to help you get a contract with the railroads which were subject to regulation by his Commission?

Mr. KEESHIN. I never asked him to help me get a contract, Senator. I merely asked him, if he had an occasion to recommend, I would appreciate it very much.

Senator ERVIN. Well, you testified as a result of your conversation with Mr. Markham, that you were determined to get the contract if it was possible; didn't you?

Mr. KEESHIN. I had no conversation with Mr. Markham. This was Mr. Markham's associate.

Senator ERVIN. As a result of your conversation, or after you had the conversation with Mr. Markham's associate, you were determined to get the contract if you could; didn't you?

Mr. KEESHIN. It wasn't a matter of a determination, it was merely a matter of first going to them and asking them to try to improve their service and that I didn't want that.

Senator ERVIN. And didn't you give testimony to that effect just a moment ago?

Mr. KEESHIN. I said that after they laughed and said that there wasn't a chance for me to get the contract, and after we had made our survey, that once we started in the thing, that we would not back down and I knew I was tampering with some pretty bad crowds who I would encounter some difficulty with.

Senator ERVIN. You were determined to see the thing through to the end; weren't you? In other words, you were determined to do everything in your power to procure the contract.

Mr. KEESHIN. It is like any man in business. You do everything in your power to get a certain business, if you really want it.

Senator ERVIN. If that is so, why do you hesitate to answer the question I put to you? That was, that you were determined to do everything in your power to get the contract.

Mr. MESEROW. I don't think that that is a fair question, to determine to do anything in his power to get the contract. That covers a pretty wide latitude.

The CHAIRMAN. He can answer it.

Senator ERVIN. I think it is a question.

Mr. KEESHIN. I tried to explain to the committee. I would not put it "everything in my power," and it wasn't a matter of life or death to get the contract.

Senator ERVIN. You were determined after you had made your survey, and after you were told by Mr. Markham's associate that

PLAINTIFF'S EXHIBIT 62 (Continued)

you stood no chance, you were determined to try to get the contract; weren't you?

Mr. KEESHIN. I was determined to get it, but not at any cost.

Senator ERVIN. Well, you were determined to get it.

Mr. KEESHIN. I am determined to get any business when I go after it.

Senator ERVIN. And so you called the man who was the Chairman of the Commission, which is empowered by law to regulate railroads, with whom you were seeking to contract, and asked him to speak a good word for you in connection with it?

Mr. KEESHIN. But I didn't call him until the next year. This was in 1954 when I filed my bid, sir, and didn't care whether I got it or not. I submitted it, and when we went all through all of the conferences and meetings with the railroads, bear in mind that these negotiations and all were going on from early August of 1954.

Senator ERVIN. Read him my question again please.

(Thereupon the reporter read back the previous question from his notes as heretofore recorded.)

Senator ERVIN. Now, it is very simple.

Mr. KEESHIN. Yes, I called him.

Senator ERVIN. That is all.

Mr. MESEROW. Mr. Chairman, I would like to have the committee bring out from Mr. Keeshin the fact that there was a real need by the railroads for a new service, and that the old Parmalee transportation service they were dissatisfied with.

The CHAIRMAN. Mr. Keeshin can state that, and I don't want to go into a long detail with that; as far as the chairman is concerned, I will concede it for the record.

Mr. KEESHIN. I don't remember if I did say this, that this request for me to bid came unsolicited, and I want the record to know that Mr. Bonn of the New York Central, and Dave Mackay, traffic manager of the New York Central, came to my office and I never solicited this business at all. I might say that after all of the headaches, and all of the harassments, and all of the threats—it wasn't worth it.

The CHAIRMAN. The Chair had a previous conference with Mr. Keeshin, in which he gave me all of the facts, and of course it is not a matter of record, but I thought he had covered that a while ago.

As I understood, you had stated, Mr. Keeshin, and this is substantially correct, that the railroads were dissatisfied with the service they were getting under the other contractor, who became your actual competitor in the final analysis of this matter.

Mr. KEESHIN. That is right.

The CHAIRMAN. They were dissatisfied with it?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. And your bid offered to greatly improve the service?

Mr. KEESHIN. Yes, sir.

The CHAIRMAN. And because of that, you think there is more merit in your bid than in your competitor's bid?

Mr. KEESHIN. That is right. And I would like to also state here for the record and this is still the United States of America, people have a right to do business with whoever they desire, and bear this in mind, gentlemen.

The CHAIRMAN. That is hardly a matter of argument. The Chair doesn't think you need to go into that, and we all know this is America.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. KEESHIN. What I wanted to bring up Senator, is that here these people were duly notified of the cancellation of their contract.

The CHAIRMAN. There isn't any question about that, that is not at issue here.

Mr. KEESHIN. I appreciate that, but I wanted you to have some of my problems that I encountered in taking this business, that they are still operating in spite of the railroads' removal and asking them to leave the stations, and they are still blocking the paths. We have had city ordinances passed where we had to go in and attempt to get a Federal injunction which was recently granted.

There are things of that sort, that happened in the old pioneer days of Chicago, and can you bear in mind that when we took over, the date of this contract, the city of Chicago had to actually furnish them 275 to 300 policemen to protect the safety of these vehicles operating on the streets?

The CHAIRMAN. Mr. Keeshin, the Chair will assure you that this committee is in no way interested whatsoever in promoting interests of—what is the name of the company—the Parmalee Co. All we are interested in is the question of Government, where Government got involved in this thing, if it did, I am talking about the Federal Government. If the Government got involved, what official of the Federal Government became involved, and what acts he did or permitted with regard to that, that may have been an impropriety or unethical.

That is the only issue that this committee is concerned with.

Mr. KEESHIN. I appreciate this very much, and I appreciated the courtesy you extended when I called on you, but I just want to say, and I realize this has nothing to do with the committee, but when one goes through the pains and the threats and when you have to have police watch you when you are going around in this civilized day, and when you have to go into Federal court in conjunction with the railroads and the unions, and we had to go in and protect the safety of our drivers, you begin to wonder what is all of this about.

Now, I was enjoying life, and I have my own companies, and I don't owe anybody any money, and I got myself into a headache, and believe me, if I knew how to get out and give the railroads back this thing, or give Parmalee back this thing; I would give it to them and kiss them on both cheeks.

This thing isn't worth all of these threats. Here I am under subpena before the Federal grand jury, and here I have to call my wife at home every 2 or 3 hours so she wouldn't think I was shot and laying in the morgue. They have told her that if I didn't back out of this Parmalee deal—and what I tell you gentlemen has been testified under oath before the Federal grand jury.

Look at the character of the man.

Senator JACKSON. What possible connection has that with this case?

Mr. MESEROW. The only connection, I think, Senator, is this: That the anxiety that you might think he might have for this contract is, the lack of anxiety is displayed.

Senator JACKSON. Is there an implication—will you wait until I finish—is there the implication that this committee is responsible or brought about these threats, and is that the implication?

Mr. KEESHIN. No. I would like to say, Senator, that I would like this committee to really investigation this whole picture, if you could.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. The committee does not have jurisdiction of the whole picture, and there are some aspects that this committee has jurisdiction of, and in that respect it has a duty to perform, and that is all that it is trying to do.

Mr. KEESHIN. Yes, sir.

Mr. KENNEDY. Mr. Keeshin, did you ask Mr. Cross to do anything for you other than to put in a word for you with these railroads?

Mr. KEESHIN. That is all.

Mr. KENNEDY. You never asked him to do anything else?

Mr. KEESHIN. No, sir.

Mr. KENNEDY. You never asked him to get any information for you?

Mr. KEESHIN. No, sir.

Mr. KENNEDY. Never asked him to find out how the contract was proceeding?

Mr. KEESHIN. No, sir.

Mr. KENNEDY. When was the last time that you talked to Mr. Cross?

Mr. KEESHIN. September 12, when he was in Chicago, attending the testimonial.

Mr. KENNEDY. Did you talk to him on the phone since that time?

Mr. KEESHIN. No, sir; I have not.

Mr. KENNEDY. Why haven't you talked to him?

Mr. KEESHIN. I wanted to but I didn't want to embarrass him, realizing that the man with all of this harassment of what the Parmalee people are saying and doing, out of courtesy to him, and knowing the situation, in fact I would like to have called him and told him I was in town this morning and sat down and have had breakfast with him, but I purposely stayed away so that nobody could say, "Well, we got into some collusion to talk things over."

Mr. KENNEDY. Have you had any contacts since September 12, directly or indirectly with Mr. Cross?

Mr. KEESHIN. No, sir; I haven't talked with him or any one of his family or anything.

Mr. KENNEDY. Did you have contacts through counsel or otherwise with Mr. Cross since that time?

Mr. KEESHIN. This is the first time I decided.

Mr. KENNEDY. The answer is "No," that is all I want.

Mr. KEESHIN. That is right.

Mr. MESEROW. Mr. Chairman, would you, for the sake of the record and your own facts, ask Mr. Keeshin if he asked his bank and other business enterprises or business associates that if any inquiry is made about Mr. Keeshin, his reputation or ability to carry out this contract——

The CHAIRMAN. I will ask him, and I assume the answer is "Yes," and I know I would if I was trying to get a contract, and I would ask any banker or anybody like that to help me. The only question here is whether I would ask the Chairman of the Interstate Commerce Commission, and you did ask other banks and other friends to help you get the contract?

Mr. KEESHIN. I went to some of the top industrial traffic firms of the country which I have dealt with for 25 or 30 years, some of the biggest shippers the railroads had.

The CHAIRMAN. I would not think that there was any impropriety in that whatsoever.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. MESEROW. Would you ask him whether the request to Hugh Cross was made as a friend of long standing or the Chairman of the Interstate Commerce Commission?

The CHAIRMAN. He can make any statement about that, but the real thing at issue would be how did the fellow take it, from the railroad company, whether it was friendship, or whether it was from his position, and you can understand that.

Do you want to say as your counsel suggests, that the only reason you asked Mr. Cross to speak a good word for you if the occasion arose was because of his friendship with you?

Mr. KEESHIN. We have been friends for a number of years, and you don't break off friendship just because one attains a position in Government.

Senator ERVIN. And the thought never entered your mind at any time that Mr. Cross's recommendation might be of greater weight by reason of the fact that he occupied the position of Chairman of the Interstate Commerce Commission?

Mr. KEESHIN. No, sir.

Mr. KENNEDY. Mr. Keeshin, during all of this period of time that you have been such close friends with Mr. Cross, up until the two times that you mentioned in 1955 did you ever visit his home or did he ever visit your home?

Mr. KEESHIN. He never visited my home, outside of attending in the old days when I operated a football club—I owned the Chicago football team.

Mr. KENNEDY. Could you answer the question?

Mr. KEESHIN. No, sir.

Mr. KENNEDY. This was during this period of time that you were such close friends?

Mr. KEESHIN. I don't get that question, the way you put it to me, "such close friends." We have been close friends since 1939 or 1938.

Mr. MESEROW. He testified to that.

Mr. KENNEDY. Up to the period of 1955, since the time of the original acquaintance, when you first became acquainted, did you ever visit his home or did he ever visit your home?

Mr. KEESHIN. Just the times I stated in the record.

Mr. KENNEDY. That is all since this contract has come into being?

Mr. KEESHIN. Prior to the contract, if you please, in 1954 when he visited my home, when we were looking over the West Town bus system, and when we got through in that area——

Mr. KENNEDY. Except for that one time in 1954, did he ever visit your home or did you ever visit his home?

Mr. KEESHIN. I have never visited his home.

Mr. MESEROW. Will Mr. Kennedy ask him if they were friendly during the time he was Lieutenant Governor?

The CHAIRMAN. What is the question?

Mr. MESEROW: Will Mr. Kennedy ask Mr. Keeshin if they were friendly during the time he was Lieutenant Governor of Illinois, and prior to that time?

The CHAIRMAN. He has said prior to that.

Mr. MESEROW. Without visiting his home.

Mr. KEESHIN. I might say that I helped carry the campaign when he was running, to help him get elected Lieutenant Governor, and I have been active in politics in Illinois.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. I think we have covered it.

Are there any other questions? If not, thank you very much, Mr. Keeshin.

(Thereupon, a short recess was taken.)

AFTER RECESS

The CHAIRMAN. Mr. Cross, will you be sworn please, sir?

Do you solemnly swear that the evidence you shall give before this Senate investigating subcommittee shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. CROSS. I do.

(At this point, Senators McClellan, Jackson, and Ervin were present in the hearing room.)

TESTIMONY OF HUGH W. CROSS

The CHAIRMAN. Please state your name, your occupation, and your residence, and what position you now hold with the Federal Government?

Mr. CROSS. My name is Hugh W. Cross. I am a lawyer. I now am a member of the Interstate Commerce Commission.

The CHAIRMAN. How long have you been a member of the Commission, Mr. Cross?

Mr. CROSS. I was appointed to the Commission by President Truman, and qualified on April 11, 1949. I was reappointed by President Truman, for a full term beginning January 1, 1951.

During my tenure on the Commission, I have served in different roles; prior to July 1, 1955, I was Chairman of the Motor Carrier Division, which then was Division 5, and also the Finance Division, which was was Division 4. The Commission rotates its Chairmanship by reason of seniority, and I became Chairman of the Commission on July 1, 1955.

The CHAIRMAN. Mr. Cross, any witness appearing before the committee is entitled to have counsel present if he desires, with respect to any of his legal rights, and of course, being a lawyer——

Mr. CROSS. As I understand, this is in executive session, and I am here to answer any and every question I know how, and I see no reason to ask for counsel.

Mr. CROSS. I am.

The CHAIRMAN. Mr. Cross, you have had conferences with members of the staff and also with the chairman of the committee regarding certain matters pertaining to your official work, and I assume that you are familiar with the nature of this inquiry.

THE CHAIRMAN. Then you are ready to proceed?

Mr. CROSS. In a general way. I have never seen the charge made, and I have been informed in a general way as to what the inquiry is.

The CHAIRMAN. Well, of course you can appreciate too, as a lawyer, that charges are not necessarily made in a formal way before a committee of this character or of this nature.

Information comes to the committee that alerts it to action, in pursuance of its duties, and they are not necessarily things such as a formal charge of indictment or a bill of particulars, but the general subject of this inquiry relates to a particular thing.

(At this point, Senator McCarthy entered the hearing room.)

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. A certain transaction involving a contract with the railroads for transportation service in the city of Chicago in which Mr. Keeshin was the successful bidder and secured the contract. You have that general information about it?

Mr. CROSS. Yes, I do.

The CHAIRMAN. Now, Mr. Cross, this is another courtesy that the Chair always extends to anyone under investigation who is an official of the Government, and that is to give them the opportunity to make any general statement of specific statement that you may desire to make in the beginning.

Mr. CROSS. I have been in public service for 22½ years. I served 8 years in the Legislature in Illinois, and in my last term I was speaker of that body, and I served 8 years as elected lieutenant governor prior to coming to Washington as I have related.

During the war I served as executive head of the Illinois War Council.

During the time that I have been in public life in Illinois, and here, I think that I have gotten to know most of the men in transportation, whether that be in the rail field, or whether it be in the motor-carrier field. You cannot do our kind of a job and live in a vacuum or in an ivory tower.

The Interstate Commerce Commission decides over 3,800 formal cases a year and resolves many thousands of matters informally.

Now, that does not mean that every formal case is an adversary proceeding. Far from it. Many of those are noncontroversial, and administerial, and so it becomes necessary for us in the discharge of our duties and under the mandate of the Interstate Commerce Act as well to know the problems of transportation, and to be able to administer those problems, and to periodically makes recommendation to the Congress as to improvements in service.

Therefore, my acquaintanceship is both broad, and I think that I have discussed with motor-carrier people nearly every problem that confronts them just as I have discussed with men in the rail industry matters that concerned them.

When this matter came up, it came as a terrific shock, and it was a body blow to me because in all of the years that I had been in public service there had never been one finger ever pointed at me, and there had never been any whisper against my conduct.

I want to say to you gentlemen, also, at the outset, that this service that is being investigated here is a service not subject to regulation by the Interstate Commerce Commission.

I have here copies of the Commission decision which held that this operation, which was then the Parmalee Co., was not subject to Commission regulation because this carrier was not a carrier as defined in part 2 of the Interstate Commerce Act, which is the Motor Carrier Act itself.

This decision was by a division of the Commission, and I did not participate in that decision.

The CHAIRMAN. Mr. Cross, you may file a copy of that with the committee, just for our records, if you desire.

Mr. CROSS. I have copies of it, yes, sir.

The CHAIRMAN. You may proceed.

Mr. CROSS. I know in a general way that the charges are that I have influenced individuals in this regard. But let me say this, to

PLAINTIFF'S EXHIBIT 62 (Continued)

pick out one small facet of the whole picture of transportation and try to blow that up to magnified proportions, is completely out of tune with our duties.

I have discussed with railroad people every phase of their problem, the question of freight rates. I have participated in panel discussions, and I have discussed with them better passenger service, and new trains, and new types of cars, and lower streamlined equipment and better service in their passenger stations, and better accommodations in making reservations in the purchase of tickets, and using of electronic devices. I have discussed the question of this passenger deficit which last year was most staggering. The railroads of the country, class I railroads of the country, lost $640 million in passenger operations.

The CHAIRMAN. Mr. Cross, does that apply to this particular service in Chicago?

Mr. CROSS. Applying that to Chicago, the railroads that serve Chicago probably have to bear a disproportionately large amount of it, Senator, because of the fact that they have no union station, and that passengers that come in there have to be physically transferred from station to station, and as a result of that, it tends to detract from the attractiveness of the passenger trip and tends to divert business to other forms of transportation.

I think the problem in Chicago is probably more acute so far as the deficit is concerned than any other spot in the country.

The CHAIRMAN. I was trying to clarify the record. I did not understand that there is a $640 million deficit. You were relating that to all of the railroads of the country?

Mr. CROSS. When you want to apply it to particular railroads, I do know as a matter of fact that some railroads suffer passenger deficits as high as $50 million a year. Some of those railroads are railroads that serve Chicago.

The CHAIRMAN. I am trying to clarify the record.

Mr. CROSS. Any improvement in their service is a matter that our Commission is vitally concerned in. So this question of the transfer service in years gone by has been a bugaboo that the railroads, I guess, have worried a good deal about. It isn't unknown to anyone, because I don't think anyone who has traveled through Chicago and has had to transfer from station to station is unfamiliar with it, and is happy with the kind of service which at the best is not too good.

Now as to my connections with Mr. Keeshin, I have known him a long while. He has been a personal friend. Our families have been friends. We visited back and forth. My wife is a friend of Mrs. Keeshin. We have visited, and we have had telephone conversations, and we have been in the spirit of friendliness, and my wife particularly has taken an interest in Mrs. Keeshin in the last 2 years bacause of her precarious condition of health.

Whether you would like for me to go into these questions, Senator, specifically and give my version of it, and then subject myself to cross-examination, or whether you would rather question me now on it, I would leave that to you.

The CHAIRMAN. We are trying to leave it to you to make any statement that you wanted to make before anyone asks a question. I only interrupted you a time or two for clarification. You may proceed if you will and just tell us the facts about it so far as you know.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. I have talked with Mr. Keeshin on the phone personally, and I have been with him, and I know him intimately. I have known him before this matter ever arose. We have had matters in common in the past. So far as this matter is concerned I think it came to my attention late in the winter or early spring. He told me about his proposal, and the matter had been put up for competitive bidding in Chicago, because the railroads were not satisfied with the service that had been rendered, and he was a bidder, and there were other bidders.

I heard about it from other sources besides Mr. Keeshin, because it was not a matter that wasn't generally known. I talked with him on the phone, and probably there were a good many conversations on the phone, and some of them I had, and some of them my wife had, and some of them we joined in mutually. The fact that I know Mr. Keeshin, and the fact that he happens to be a friend, I shall never deny, because I think that I have a right to do that.

Now, as to exercising any influence, I want to say this:

I recall talking to three people. I recall talking to Mr. Paul Feucht of the Northwestern Railroad. I discussed with him their problem. And I might say, when I questioned myself as to the reason for it, I say now that I was indiscreet, and I should not have done it, but their problem was somewhat unique.

In Chicago, the Northwestern station is isolated, and no other railroad goes in there, and it is well known in financial circles, and before the Commission that the problems of the Northwestern Railroad are probably more difficult than any class I railroad in the country.

They have a difficult problem of transfer of passengers because a passenger that goes into that station has to be transferred, whereas some of the other stations, 3 or 4 railroads serve, and many times the passengers can simply transfer from one train to another at the same station.

Their tax problems are great. Their commuter losses are excessive, and their average hauls are shorter than most railroads. We are charged with watching the welfare of the carriers and the Northwestern has been one of the railroads that has not been able to share the general advantages that others have had. They have had their problems, and some of those problems are before us officially.

I talked with Mr. Feucht about the situation, and I suggested to him that I thought that he should carefully weigh and investigate the different bids that had been submitted. And that it should go to the carrier that could give them the best service. I recall him telling me that he had doubts about the financial ability of Mr. Keeshin, and I said it looked like a lot of money to me, but it was my understanding that Mr. Keeshin had ample financial backing from one of the two largest banks in Chicago, and I don't recall whether it was the Continental & Commercial National or the First National. But those matters could be easily ascertained.

I did not ask Mr. Feucht to do anything as a personal favor to me or as a personal favor to Mr. Keeshin. I simply suggested to him that they should weight it from the standpoint of what would do their railroad the most good.

I think that conversation took place in May. Dates are hard to remember.

PLAINTIFF'S EXHIBIT 62 (Continued)

I talked with Mr. Howard Simpson of the Baltimore & Ohio. I knew Mr. Simpson well, and I inquired of him at one time as to the status of these bids and I think that I asked him how many bids were in, and the status of them, and what progress was being made, and he said that he would investigate and advise me which he did.

I talked to him on one occasion in his office. The occasion for that was that I was in Baltimore to go to a tailor. I go to a tailor over there named Schwartz. This suit I have on I bought there, and that was the occasion of my being there. I stopped briefly in his office and I was there perhaps 20 minutes. He showed me around and he showed me the old paneling and the beautiful woodwork in that old building. When we discussed several problems, and I think that was mentioned.

Whether it was ever mentioned again or not, I do not know, although I will say that the Baltimore & Ohio have had refinancing before the Commission. That was probably the biggest refinancing that any railroad has ever undertaken. It was not an adversary proceeding and it was entirely administerial. They had to comply with the requirements of the financial underwriters and they had to comply with the Interstate Commerce Act. Those negotiations dragged along for a long while. They finally terminated early in December. That refinancing of the Baltimore & Ohio gave that railroad a completely different picture. About 3 years ago the RFC still owned the bonds that they had taken back in the depression days, and they could not get anyone to buy them up, and as I recall it, the bid was rejected, and then they were put up together.

Finally a plan was worked out, and the Baltimore & Ohio today is on a solid financial basis, and it has one major mortgage with different serial notes and bonds under that, maturing at different times. The bonds will largely be amortized so that within the space of about 2 years, or 2½ years, the financial picture of the Baltimore & Ohio has improved to such a degree that their securities are now prime securities. I have talked with Mr. Simpson about those matters many times.

I don't recall anything ever being mentioned to him except in the most casual way.

I have also talked with Mr. Wayne Johnston of the Illinois Central. I met him casually but frequently. When the Association of American Railroads meets in Washington, he generally comes down here and frequently is in my office. I have seen him other places, and I have seen him in social affairs. We both went to the same college, and he is a trustee of the University of Illinois, where I attended. I have been interested in his work as a trustee, which is an elected office in Illinois.

I have discussed with him whether he is going to run again for that office, and that comes up this next year. I have discussed with him the new building that they put up and I have discussed many things with Wayne Johnston, and I am sure that I have referred on probably more than one occasion to this Keeshin thing, but never did I put any pressure upon Wayne Johnston, and it was in the most casual way that these matters came up.

I do not recall any other person that I talked to about this matter.

Now, in Chicago, involved in this situation, there are 21 major railroads. There are six passenger depots.

(Senator McClellan left the hearing room.)

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. To me it is inconceivable that the conversations that I had could have resulted in any pressure or undue influence upon the carriers, or that they would have in the slightest degree have felt that I was trying to pressure them or to in any way influence them in a decision. There are other aspects of this matter that I would like to refer to.

Reverting back to my acquaintanceship with Mr. Keeshin, Mr. Keeshin has been before our Commission several times, directly and indirectly.

The first case was in the case of the Pacific Inter-Mountain Express Co., a large motor regular route common carrier with rights to the Pacific coast, to Chicago, and St. Louis, and a very successful motor carrier operator proposed in 1950 to buy the bankrupt Keeshin lines, which was before our Commission and which was in the Federal courts in Chicago.

Mr. Keeshin himself was out of it, but he was a creditor.

(Senators McClellan and Jackson returned to the hearing room.)

Mr. CROSS. The Commission in that proceeding turned down the application of the Pacific Inter-Mountain Express to buy control, on the grounds that the proof had not been established under the Interstate Commerce Act, and that such control without proof of public convenience and necessity was demonstrated to be detrimental to other competing carriers and would be injurious if the matter were approved by the Commission. I voted then to deny the acquisition.

The matter came up again before the entire Commission on a petition for reconsideration, and that petition for reconsideration, it was represented there that the creditors of the Keeshin Co. would lose heavily if the Commission did not approve the application by Pacific Inter-Mountain Express to purchase, and the Pacific Inter-Mountain Express Co. proposed to pay the creditors out, dollar for dollar. I voted against that proceeding, and Mr. Keeshin of course being a creditor.

I have a copy of both of those reports, and the first report was unanimous, and the second report, there were two dissents by other Commissioners, but I voted with the majority which was adverse to Mr. Keeshin.

The matter went along until 1954. The Keeshin Co. in bankruptcy was losing money all of the time. Finally, there was a plan submitted to the Commission for new money to be injected into the company, and for a reorganization. That was before the Commission, and the Commission again turned down the application on the grounds that the finances as proposed were inadequate, and further that the Fruehauf Trailer Co., which was connected with Denver & Chicago Transportation Co. and the Cleveland Navigation Co., were improper parties under the act.

Finally, on June 7, 1954, all of the objections of the Commission having been met, the matter was approved, but as I say this matter proceeded for more than 4 years. Mr. Keeshin was interested as a creditor and the records in these proceedings showed that he also was seeking to get the name of his company back, so that he could use it and take it out of the bad repute of bankruptcy.

Mr. Keeshin has been before the Commission a time or two on minor matters.

PLAINTIFF'S EXHIBIT 62 (Continued)

62 HUGH W. CROSS, CHAIRMAN OF ICC

When I was chairman of division 5 last spring, he sought a temporary authority, I think, for 120 days, and I believe he got it for 45 days. That was for one of his companies. He sought permanent authority and that was turned down by the examiner in his report and to my knowledge no appeal has been taken from that, so that amounts to denial.

So as to my personal relations with Mr. Keeshin, as a Commissioner, I never voted for him, and I have never given him a favorable vote, and it cannot be said that the Interstate Commerce Commission has ever given him a favorable vote since I have been on that Commission.

Another thing that I want to emphasize is this so-called idea of pressure. The Commission most scrupulously refrains from exerting any pressure upon our staff, upon our examiners who hear cases. One of the things that has been said countless times about the Interstate Commerce Commission is the freedom that prevails there. We do not put pressure on our staff, and Commissioners do not discuss cases between themselves except in the open conference room. Certainly I would be completely out of my role, and I would be betraying my duty if I were to try to exert any type of pressure upon outsiders. Those people who refrain from exerting pressure on us whenever there is any matter that could even smack of being an adversary proceeding or where any personal interest is involved, I am sure that men of the caliber of the three that I have talked with would be the first to rebuke me if I had ever done anything out of line.

I have received in effect what I consider to be threats from the attorney representing the Parmalee Co. I can go into that if you want it and I related it to you, Senator McClellan, but the outcome of that conversation with Mr. Lee Freeman, the attorney for Parmalee to me was nothing except an outright threat against me personally. It came up when about the last of July or the first of August, when he was trying to see me, Congress was about to adjourn, and we were being asked to appear here and there on bills. We were doing extra time work to accommodate the Congress, in view of their adjournment, and I could not see him. But he called me on the telephone and he said that he wanted to talk about the Parmalee situation. He said that they had lost a contract to another company, headed by Mr. Keeshin, but that Mr. Keeshin would never be able to operate that company. He said that they had gone to the city council of Chicago, and mind you, they had been operating for 100 years without any authority, but they had gone to the city of Chicago and got an ordinance through that gave them the exclusive right to use the city streets of Chicago in this transfer business of passengers, and baggage from station to station.

He said that Keeshin could never operate, and never would operate, and the only way he could do it would be to come to the Interstate Commerce Commission and get emergency temporary authority and also permanent authority. I suppose he was trying to embarrass me because by that time I was Chairman of the Commission.

I asked him if Mr. Keeshin had made any applications for any authority, and he said "no." Well, I said, "Mr. Freeman, you have been around, and you ought to know that we are glad to discuss with you or anyone else controversial matters, and those things that have to do with pleading, but we will not discuss the merits of cases. Now, what case is before us?"

PLAINTIFF'S EXHIBIT 62 (Continued)

And he said, "There isn't any case before you yet."

Well I said, "What is there to discuss?"

He said, "I am just serving notice on you, and I am warning you, because you are going to hear about this for a long, long time."

That was the first intimation that I had that this thing had developed into that kind of a situation.

I think that just about relates the facts as I know them, Senator McClellan.

The CHAIRMAN. All right, Mr. Cross. Thank you very much for your statement.

As I told you in the beginning, when any Government officials are involved, we always accord them the courtesy of making any statement they may choose to make before they are questioned.

I am going to ask you a few questions, and then defer to others. There are some 3 or 4 points that I wanted to get as specific as we can.

In your talk with Mr. Paul Feucht, with the Northwestern Railroad, was that a personal conversation or was it a telephone conversation?

Mr. CROSS. That was a telephone conversation.

The CHAIRMAN. Is that the telephone conversation in which you asked him to check on the status of this bid and contract?

Mr. CROSS. Yes.

The CHAIRMAN. You asked him to check on it?

Mr. CROSS. Yes.

The CHAIRMAN. What else did you tell him in that conversation?

Mr. CROSS. Well, I think so far as I can tell, I have just about related all I can recall.

The CHAIRMAN. Well, may I ask you, at that time, when you asked him to check on it, were you familiar with the different proposals, the one as between Parmalee and the one between Parmalee and Mr. Keeshin? Did you know anything about the details of the proposal, and the price, and the provisions, and the terms that they were proposing that if they got the contract?

Mr. CROSS. I did not have any knowledge as to the specific terms of the bids.

The CHAIRMAN. Did you have any knowledge as to the contracts so that you could discuss it from the standpoint, or the proposals of Parmalee and the proposal of Keeshin, so that you could discuss it from the relative merits of the two contracts?

Mr. CROSS. No, I did not know what the other bid or bids were. I think I mentioned that there were 3 bids in there, and I did not know what the other 2 were.

The CHAIRMAN. Did you know what the Keeshin bid was, and what was in his proposal?

Mr. CROSS. I knew the kind of service that he was offering.

The CHAIRMAN. What do you mean by that, "the kind of service." It was all to be the same service?

Mr. CROSS. I knew he was offering new equipment, air-conditioned equipment, and all new equipment, and a new method of handling baggage because that was one of the difficulties that passengers most complained of, and I had heard that many times, that passengers who had baggage which had to be checked were not transferred to the train. But as to the details of how he was going to do that, I didn't know that. But I did know that he proposed new equipment, and he proposed expedited service, and by comparison with what the

PLAINTIFF'S EXHIBIT 62 (Continued)

Parmalee service had been, it was such an innovation that there was just no comparison.

The CHAIRMAN. Did you know anything about a provision regarding wage increase, and an increase of cost of transporting baggage of passengers on the basis of any wage increase that Mr. Keeshin might give to his people?

Mr. CROSS. I think that Keeshin told me that in his bid he had contemplated wage increases, and was making a definite firm bid.

The CHAIRMAN. Did you know the details of that proposal?

Mr. CROSS. Not in detail. If I knew the facts of it, I have no recollection of it now.

The CHAIRMAN. Did you discuss that aspect of Mr. Keeshin's bid with Mr. Feucht?

Mr. CROSS. Well, I probably mentioned to him that the Keeshin bid was a firm bid which would cover any contingency that might arise.

The CHAIRMAN. Did you know at that time anything about the Parmalee interest's bid, as to what rate it had proposed in its proposal?

Mr. CROSS. No, I did not.

The CHAIRMAN. Did you know that it had revised its proposal downward?

Mr. CROSS. No, I did not.

The CHAIRMAN. You did not discuss that with Mr. Feucht?

Mr. CROSS. No.

The CHAIRMAN. Did you know the number of station wagons that Mr. Keeshin proposed?

Mr. CROSS. I know that Keeshin proposed in addition to station wagons, and air conditioning, to have radio controls.

The CHAIRMAN. Did you know the number of station wagons proposed?

Mr. CROSS. I am not sure that I did. I cannot say that I did or did not. I don't know enough about it. I have no recollection of that part of it. I think that Keeshin said that by using radio controls, he would not have to have as many units as had been used formerly.

The CHAIRMAN. Do you know anything about the air conditioning or heating condition of the equipment that Mr. Keeshin proposed?

Mr. CROSS. I know that he proposed to use air conditioning and heating equipment.

The CHAIRMAN. Did you discuss that with Mr. Feucht?

Mr. CROSS. It is quite possible that I did.

The CHAIRMAN. We will resume this matter.

Mr. Cross, in discussing this matter with Mr. Feucht, what was your purpose? What was your purpose in discussing this particular contract with him?

Mr. CROSS. Well, I have searched my mind on that, and I think my motive was with knowledge of the difficulties that the railroad was encountering, and their isolated position in Chicago, and the high taxes that they were having to pay, and their passenger commuter deficits, and the fact that every passenger that used the Northwestern had to be transferred to another station.

The CHAIRMAN. Well, of course that is a condition that obtained. What was your personal interest or official interest in calling him to discuss this particular contract with him since the Interstate Commerce Commission, according to the findings of the Interstate Com-

PLAINTIFF'S EXHIBIT 62 (Continued)

merce Commission, had ruled that it had no jurisdiction over this operation?

Mr. CROSS. I think that I was indiscreet about it, and I think it was a mistake, and it is just one of those things that when you think a railroad or any other carrier ought to give attention to a matter that is foreign to our jurisdiction, you might pass the world along.

The CHAIRMAN. Well, may I inquire whether you made any statement of a personal interest in the matter, to Mr. Feucht?

Mr. CROSS. I did not make any statement of a personal interest in the matter to Mr. Feucht.

The CHAIRMAN. Did you use in your conversation with him, this language in substance, that you were very much interested in seeing that Mr. J. L. Keeshin got the new contract with the railroads there in Chicago to handle baggage and people between the various stations. Did you make that statement?

Mr. CROSS. I don't think that I used that language literally. I think that I said that I believed that they should weigh the Keeshin bid and consider it from the standpoint of the carrier itself. I disclaim any use of language, and I could be wrong, but I certainly never had any intention to exert what would be considered pressure upon that gentleman.

The CHAIRMAN. Let us reverse your position. Had you been in Mr. Feucht's place, and had received a long-distance telephone call from the Chairman of the Interstate Commerce Commission in which the Chairman said to you that he was very much interested in seeing that a certain person got a certain contract, would you, assuming that language was used, have felt that that was pressure or the use of the official position of the person talking to you to imply an interest that was of some concern?

Mr. CROSS. I think that if that language were used—and I don't put those words back into my own mouth—I think if that language were used it would be very indiscreet.

Let me say, gentlemen, in public life, we sometimes do things or say things that we would regret afterward.

The CHAIRMAN. Do you contend or maintain that a call of this nature regarding a contract and an operation over which your Commission had no jurisdiction was in line with any official duty of yours?

Mr. CROSS. Well, I think it was indiscreet.

The CHAIRMAN. Then, if after having made the statement that I have quoted in substance as an initial premise for what followed, that one did follow with statements and arguments with respect to the comparative merits of the contracts, or of the bidders' proposals, would that further indicate to you that there was a personal rather than an official interest in it?

Mr. CROSS. So far as I am concerned, there was no personal interest in it.

The CHAIRMAN. Did you know at that time that the Keeshin proposal was backed up by a certificate from a bank as to the large amount of credit rating he had?

Mr. CROSS. No, I don't know about any certificate from a bank as to his credit rating, and in fact I don't know what his credit rating is.

The CHAIRMAN. You did not know at that time that he had a letter from a bank or assurances from a bank that he could get the credit to buy the equipment?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. I know that he told me that he had ample banking.

The CHAIRMAN. Did you know what bank?

Mr. CROSS. Well, it was 1 of the 2 banks in Chicago; either the First National or the Continental Commerce Bank, and I can't recall which.

The CHAIRMAN. Did you discuss that with Mr. Feucht?

Mr. CROSS. Yes, I mentioned that fact to him, and I mentioned the fact that if there was any question as to Mr. Keeshin's financial stability that it could easily be ascertained, but I didn't have knowledge of what his credit rating was.

The CHAIRMAN. Did you have any conversation with Mr. Feucht with reference to the advantages of having local representation there in Chicago by contracting with Mr. Keeshin, rather than with Parmalee which in effect was absentee representation?

Mr. CROSS. Well, it could have been mentioned.

The CHAIRMAN. Then let us go back a little further now, before this conversation. Prior to this conversation which was had, do you remember what date it was?

Mr. CROSS. I think it was in May.

The CHAIRMAN. It was sometime in May? Prior to that had you discussed in some detail this matter with Mr. Keeshin from time to time or at different times?

Mr. CROSS. Yes; he told me about what his plans were.

The CHAIRMAN. In those conversations did he at any time ask your assistance, or help in any way, in connection with securing this contract?

Mr. CROSS. I think that he inferentially at least, did.

The CHAIRMAN. In what manner, Mr. Cross.

Mr. CROSS. I think that he didn't ask me to go out and talk to people, if you mean that.

The CHAIRMAN. What did he ask you to do?

Mr. CROSS. I think he said to me if I could put in a good word for him, he would appreciate it.

The CHAIRMAN. Did you agree to put a good word in for him?

Mr. CROSS. I don't think that I agreed to that.

The CHAIRMAN. Did you regard these three conversations that you have referred to with Mr. Feucht and Mr. Simpson as presidents of railroads involved, and possibly with Mr. Wayne Johnston—did you regard those conversations and this one in particular that I have been questioning you about as complying with his request to put in a good word for him?

Mr. CROSS. I think so far as the Northwestern was concerned, noting their financial plight, that I was more concerned in trying to help them out than anything else, because they are in difficulties, as you know.

The CHAIRMAN. Had they asked any assistance from you or to put in a good word for them in any way?

Mr. CROSS. No; but you can't be charged with administration of an act and not be interested in knowing that the carriers are able to carry on and make earnings.

The CHAIRMAN. May I ask you another question. Whom did you talk to first, was it Mr. Simpson, or Mr. Feucht, regarding the matter?

Mr. CROSS. I think that I made my first inquiry of Mr. Simpson.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. Which was it that you met in Baltimore, was it Mr. Feucht or Mr. Simpson?

Mr. CROSS. Mr. Simpson.

The CHAIRMAN. You asked Mr. Simpson, as I recall, to check into the matter and find out the status of it, and advise you?

Mr. CROSS. That is right.

The CHAIRMAN. And after that did he report to you on it?

Mr. CROSS. He did.

The CHAIRMAN. Was it following that report, the initial report that he gave you, that you asked him to meet you in Baltimore so that you could talk to him in person?

Mr. CROSS. No; I think that you have it in reverse.

The CHAIRMAN. You first talked to him in Baltimore about it?

Mr. CROSS. Yes.

The CHAIRMAN. You then telephoned him about it; was that correct?

Mr. CROSS. That is my recollection.

The CHAIRMAN. That is your recollection of it?

Mr. CROSS. Yes, sir.

The CHAIRMAN. All right. Back prior to the initiation of this transaction, had you had any discussions with Mr. Keeshin regarding the employment with him in the event that you should leave, or becoming associated with him in the event that you should decide to leave the Government and leave your position on the Interstate Commerce Commission?

Mr. CROSS. At one time a year or two ago, I talked with Mr. Keeshin about the purchase of an intrastate business line that was not under our regulations. Some feelers were put out on the underwriting of it, and that fell through. There never was any definite commitment that I would go with him, and no consideration as to pay, and what capacity I would have, but it was in the formative stage. That is the only time that I have ever talked with Mr. Keeshin about being employed by him. According to my recollection, that was more than 2 years ago.

The CHAIRMAN. That transaction fell through, and it was never consummated, the purchase of the intrastate business system?

Mr. CROSS. That is right.

The CHAIRMAN. At that time, when that fell through——

Mr. CROSS. That was a going concern, and it was not healthy but it looked like it might be revitalized.

The CHAIRMAN. At that time, when that fell through, in conversation immediately afterwards or in some of the other conversations you may have had with Mr. Keeshin, had the offer been renewed that at any time you wanted to get out of Government and go into business that he wanted to have you with his firm?

Mr. CROSS. No; the offer was not renewed.

The CHAIRMAN. Was there any understanding or any conversation between you and Mr. Keeshin beyond that one company that he was trying to purchase?

Mr. CROSS. That was the only one.

The CHAIRMAN. And there was no further conversation afterwards about the possibility of your going with him at any time?

Mr. CROSS. That is right, that is absolutely right.

PLAINTIFF'S EXHIBIT 62 (Continued)

The CHAIRMAN. And positively none with respect to the transfer service contract in Chicago?

Mr. CROSS. There was no mention ever made of that.

The CHAIRMAN. Was there any implied understanding between you when he asked you to speak a good word for him that you were to do that?

Mr. CROSS. There was not in any way. As I have told you, I voted against him on anything and everything that ever came up before our Commission.

The CHAIRMAN. Yes; and I may say this to you, that you are a lawyer, and I know a much better one than I would ever be. I practiced law just a little, and when you have these facts before you or information before you as completely as we have it, it is our duty, and I know you appreciate that, to interrogate you with respect to it so that you may have the opportunity and so far as I'm concerned I am trying to acquaint you with everything that is before the committee.

You may have the opportunity to deny or to explain or make whatever statement you like. That is the only purpose in what I am pursuing here.

Mr. CROSS. There never was any promise of reward, and I have never had any interest in any enterprise of Mr. Keeshin, directly or indirectly, and there never was anything between us. As to going with him or as to this operation in Chicago, there never was anything.

The CHAIRMAN. May I ask you this: You have referred to three conversations that you have had with railroad presidents. In those the Keeshin matter was mentioned. Two of them were with Mr. Feucht and Mr. Simpson, and that was more in detail, and more specific than the casual conversation that you had with President Johnston, of the Illinois Central. May I ask you this question: After these conversations did you acquaint any other member of the Commission with the fact that you had approached them and discussed the Keeshin contract or proposed contract and let them know of any interest you may have had or any activity that you pursued in connection therewith?

Mr. CROSS. Any member of the Interstate Commerce Commission, you mean?

The CHAIRMAN. Yes.

Mr. CROSS. No; I did not.

The CHAIRMAN. First I may ask you, you had many telephone conversations with Mr. Keeshin, I believe, and either he calling you or you calling him; is that correct?

Mr. CROSS. That is correct.

The CHAIRMAN. Do you remember the date that this contract was consummated that was announced by the railroad, that they had given it to Mr. Keeshin?

Mr. CROSS. No; I do not. I think it was the latter part of June that I saw it. I saw it first in one of the trade publications.

The CHAIRMAN. Was that your first knowledge of it?

Mr. CROSS. Of the consummation; yes.

The CHAIRMAN. You say it in a trade publication?

Mr. CROSS. Yes, sir.

The CHAIRMAN. Do you know how long afterward, after the date it was announced? Would that be a daily trade publication, or a weekly one, or do you recall?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. Well, it was, I saw it in Transport Topics, which is published under the auspices of the American Trucking Associations, and I think that I saw it in Traffic World.

The CHAIRMAN. Do you recall whether you telephoned Mr. Keeshin on the day the contract was awarded or if he telephoned you on that day?

Mr. CROSS. I have no recollection of that.

The CHAIRMAN. Was there anything significant that happened afterward with respect to it, in further conversations between you and Mr. Keeshin, regarding his having received the contract?

Mr. CROSS. I can think of nothing significant.

The CHAIRMAN. Was there any occasion in which he expressed his appreciation to you for the assistance you had given him?

Mr. CROSS. Not to my knowledge.

The CHAIRMAN. Didn't he telephone you when the last contract was let and express his appreciation to you for the help you had given him?

Mr. CROSS. I have no recollection of anything of that kind.

The CHAIRMAN. May I inquire about one other thing that you have testified to?

First, before I do that, did you have knowledge, Mr. Cross, that the report was abroad in Chicago, in that area, that if Mr. Keeshin's company got the contract, that you would probably leave your post here in Washington and become associated with Mr. Keeshin? Did you have any information about that?

Mr. CROSS. I have no information of that.

The CHAIRMAN. Can you account for Mr. Freeman, the lawyer for the Parmalee interests, having called you and first having tried to see you, and then when he was unable to see you, having telephoned you and engaged in the conversation that you have related here today? Can you account for it, why you would be singled out to be called?

Mr. CROSS. I suppose he did then what was done later, and that is attribute the responsibility to me, because I think that is what the charge is, isn't it?

The CHAIRMAN. Yes; but do you think that maybe that was the reason for it, and he was blaming you for either interfering or influencing the railroads in giving the contract to Keeshin?

Mr. CROSS. Yes; putting a few things together, I think that was the basis of it.

The CHAIRMAN. That was probably the reason?

Mr. CROSS. Yes, sir.

The CHAIRMAN. That would indicate somewhat—and I am just speaking out loud—that possibly there was some report, and I am not saying it is true, but there was some report abroad in Chicago at the time or immediately following the awarding of the contract that you had interceded in the matter.

In other words, I could not rationalize any reason why he would call you and single you out, unless he must have had some information to that effect, or some report to that effect.

Mr. CROSS. I have no knowledge of that one way or the other.

The CHAIRMAN. Did he in that conversation charge that you had interfered or influenced the matter in any way?

Mr. CROSS. That was the impression that I gained from his conversation, and I could not——

The CHAIRMAN. That he was charging you with that?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. Charging me with that responsibility, yes.

The CHAIRMAN. Do you remember the date of that call?

Mr. CROSS. Well, it was the last of July or the first of August.

The CHAIRMAN. The last of July or the first of August?

Mr. CROSS. It was a few days before the adjournment of Congress.

The CHAIRMAN. That would be some time then after the contract had been awarded?

Mr. CROSS. Yes.

The CHAIRMAN. It wasn't immediately afterwards?

Mr. CROSS. No. I am sure of that, because I had an appointment on the Hill that morning, and I had to go over there, and Congress was getting ready to adjourn.

The CHAIRMAN. All right. I am going to defer to the other Senators now, if you wish to ask a few questions. I will be right back.

(Senator McClellan left the hearing room.)

Senator JACKSON. What did Mr. Keeshin ask you to do when he called?

Mr. CROSS. Mr. Keeshin never made any requests of me to do anything. Mr. Keeshin had never gotten anything from me on the Commission. I have related that to you.

Senator JACKSON. We have all of that, but I am referring only to this matter, which is before the committee. What did he ask you to do?

Mr. CROSS. He didn't ask me to do anything.

Senator JACKSON. Well, what did he say?

Mr. CROSS. He told me about his plans, and all of that, but he made no requests of me.

Senator JACKSON. Why did you get busy about it and call these other people?

Mr. CROSS. If he did anything, I think that he asked if I could find the status of it, and I think that was the basis of my conversation with Mr. Simpson.

Senator JACKSON. How would he expect you to do that?

Mr. CROSS. As to anything else, he never mentioned or made any request of me.

Senator JACKSON. How would he expect you to find the status of it? When it is a matter over which the ICC has no jurisdiction?

Mr. CROSS. I suppose he knew that I knew Mr. Simpson, and just like anyone would make a casual inquiry, but he didn't ask me—he didn't ask me to call Mr. Simpson. He may have asked me to find out the status of it, but he didn't ask me to call Mr. Simpson or anyone else.

Senator JACKSON. Why would he call and ask you about the status of this matter when you had no jurisdiction over it? I take it that you felt these calls were in your official capacity, or the calls that you were receiving?

Mr. CROSS. Well, I would say if it was something Senator that didn't concern us officially, that it wasn't inappropriate for me to make an inquiry.

Senator JACKSON. You felt what he asked you, and I still am at a loss to know what he asked you, but I take it that you implied then, did you, from his conversation that he wanted you to inquire of the companies?

Mr. CROSS. I think he was wondering how I was getting along.

PLAINTIFF'S EXHIBIT 62 (Continued)

Senator JACKSON. What is that?

Mr. CROSS. He was wondering how it was getting along, and I didn't know anything about it.

Senator JACKSON. How you were getting along?

Mr. CROSS. How it was getting along.

Senator JACKSON. How it was getting along?

Mr. CROSS. Yes.

Senator JACKSON. Well, why would he do that?

Mr. CROSS. He didn't ask me to call Mr. Simpson, or he didn't ask me to call anyone.

Senator JACKSON. What made you call these people, then?

Mr. CROSS. I have already related as to Mr. Feucht. As to Mr. Simpson, I didn't consider it inappropriate to ask him the status of a matter.

(Senator McClellan returned to the hearing room.)

Senator JACKSON. In the case of Mr. Feucht, they are having financial trouble, and you felt that you ought to help out in their problem, is that right, that is the substance of it?

Mr. CROSS. I think that that was right.

Senator JACKSON. Now, was the Baltimore & Ohio having financial difficulty too?

Mr. CROSS. No.

Senator JACKSON. Why did you call them?

Mr. CROSS. I knew Mr. Simpson well, and he was close by.

Senator JACKSON. So you called him because you knew him personally?

Mr. CROSS. That is right.

Senator JACKSON. Did you——

Mr. CROSS. And I didn't consider it inappropriate to ask him a question.

Senator JACKSON. Did you tell him that you were calling as chairman, or an individual capacity, or did you make any disclaimer?

Mr. CROSS. No, I didn't. He certainly knew I was doing it on an individual capacity.

Senator JACKSON. But you didn't say anything?

Mr. CROSS. Well, when you know a man, and you ask him a question, what would be your conclusion?

Senator JACKSON. Well, I am just asking the question, and you can give the answers. You made an appointment to go over to see him?

Mr. CROSS. I made an appointment to go over and get some clothes, and I stopped there to see him.

Senator JACKSON. Didn't you make an appointment with him?

Mr. CROSS. Yes, I knew I was going to be over there, and I stopped in. and he has invited me previous times to come in and see their place, and I had been in Baltimore at banquets, and it wasn't anything new, and I don't think it was inappropriate to go into the office.

Senator JACKSON. The record will speak for itself, whether it is appropriate or inappropriate.

Mr. CROSS. I was over there, and this suit of clothes came from there.

Senator JACKSON. I am not concerned about that, Mr. Cross, you are a lawyer and let us just stick to the issue and we will get along faster, and I will be very fair. I just want to get the facts for the

PLAINTIFF'S EXHIBIT 62 (Continued)

record, and that is all we are interested in. I have no feelings about this matter one way or the other. If we stay away from extraneous matters, it will help.

Mr. CROSS. All right.

Senator JACKSON. Did you go over to see Mr. Simpson for any other purpose?

Mr. CROSS. It was mainly a social call while I was there in Baltimore.

Senator JACKSON. You just went for the purpose of a social call and nothing to do with this matter that Mr. Keeshin was interested in?

Mr. CROSS. I discussed other matters, and I didn't go there for the purpose of that.

Senator JACKSON. If it were just a social call——

Mr. CROSS. Mr. Simpson was a friend, and he asked me to come in there, and he wanted me to see the old fine paneling.

Senator JACKSON. You say he asked you to see it?

Mr. CROSS. He had not specifically, not then.

Senator JACKSON. Isn't it a fact that you called to make an appointment to see him?

Mr. CROSS. I did call him, and I said that, sir,

Senator JACKSON. You called to make an appointment to see him and the primary purpose of your visit with him was to discuss this Keeshin matter?

Mr. CROSS. Well, I hate to go into other matters, but the B. & O. financing was far outshadowing anything else.

Senator JACKSON. Isn't it unusual for an Interstate Commerce Commission officer to go to the office of a railroad official and discuss matters that come within the jurisdiction of the Commission? You say financing?

Mr. CROSS. That, sir, I tried to emphasize was a noncontroversial and nonadversary and they had come to us in a formal way, and we had to take care of their details.

Senator JACKSON. What other times have you gone and made special trips to see railroad officials on matters that were not in litigation or in controversy before the Commission? Did you make it a practice?

Mr. CROSS. I have done it in railroad official offices without any cause whatever.

Senator JACKSON. Special trips, just to see them?

Mr. CROSS. I was in Baltimore, as I told you, to buy a suit of clothes.

Senator JACKSON. What did you discuss with him over there, with Mr. Simpson?

Mr. CROSS. I think we discussed a few of their problems, and a few of their plans for rehabilitation of their financial structure.

Senator JACKSON. Is that what most of the conversation was about?

Mr. CROSS. I don't think that I was there Senator, over 15 minutes, and he showed me around the building, and we discussed a few things, and I passed the time, and I went on.

Senator JACKSON. Did you call Mr. Keeshin back after he had called you about this matter of his submitting a bid on the transportation of people and baggage in Chicago? Did you call Mr. Keeshin back and advise him at any time of your conversations with these railroad officials? Did you ever report back to him and say, "Well, I have talked to so-and-so, or such-and-such railroads" and advise him that you have been in touch?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. I could have related it but I have nothing to report to him.

Senator JACKSON. Well, after, for instance you talked to Mr. Feucht, didn't you call back and advise Mr. Keeshin as to the status of the matter, as you found it, after talking with Mr. Feucht or Mr. Simpson?

Mr. CROSS. I would not say that I did, or that I didn't.

Senator JACKSON. Well, you would remember that, would you not?

Mr. CROSS. I would assume that I mentioned it, but I got no definite answers from anyone, and I didn't.

Senator JACKSON. Didn't you report back, the fact that you had talked with these people?

Mr. CROSS. I could have done that.

Senator JACKSON. Well, can't you say, and you had a lot of calls with Mr. Keeshin, after——

Mr. CROSS. I would rather assume that I did. I would conclude that I did.

Senator JACKSON. Without going into detail?

Mr. CROSS. I would assume that in my conversations I mentioned that.

Senator JACKSON. Did you mention that you had discussed this matter with Mr. Feucht, for example?

Mr. CROSS. That could well be.

Senator JACKSON. And with Mr. Simpson?

Mr. CROSS. That could well be.

Senator JACKSON. And Mr. Johnston?

Mr. CROSS. Well, I don't think there was anything conclusive that I ever got from Mr. Johnston.

Senator JACKSON. Well, the fact that you had talked with him, and I am not going into details as to what you said.

Mr. CROSS. I don't know whether I ever mentioned about Johnston or not.

Senator JACKSON. Now, I gathered earlier in your testimony, that you were a good personal friend, you and your wife, and his wife, and Mr. Keeshin's wife were good personal friends and visited back and forth. Is that correct?

Mr. CROSS. That is correct.

Senator JACKSON. And you visited in his home, did you?

Mr. CROSS. We have been to their home, yes.

Senator JACKSON. How many times, roughly?

Mr. CROSS. Two or three times.

Senator JACKSON. When did you first visit? You got to know him, I think you said you first got to know him back about 1939.

Mr. CROSS. It was about that time, 1939 or 1940.

Senator JACKSON. When did you and your wife first visit in his home? Roughly—I don't mean to go into detail.

Mr. CROSS. Well, I have been to his home several times, and I think my wife may have been there once or twice.

Senator JACKSON. You have been to his home several times in Chicago?

Mr. CROSS. Yes.

Senator JACKSON. And has he been to your home here?

Mr. CROSS. No, he never has.

Senator JACKSON. He never has? Has he or his wife?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. We have invited them, and I think the answer is that his wife just can't do it.

Senator JACKSON. But you and your wife have visited several times in Chicago, and when was the last time?

Mr. CROSS. The last time we visited them, I think, was late this summer.

Senator JACKSON. Late this summer?

Mr. CROSS. Yes, sir.

Senator JACKSON. When was that; this summer?

Mr. CROSS. In September.

Senator JACKSON. Was that in Chicago?

Mr. CROSS. That was at his home near Rhinelander, Wis.

Senator JACKSON. When was the time prior to that? Well, how many times this year? That is, other than this September visit in Rhinelander.

Mr. CROSS. I think Mrs. Cross had been to their home once, and I have been there 2 or 3 times.

Senator JACKSON. Was that in Chicago?

Mr. CROSS. I think so; yes, sir.

Senator JACKSON. In Chicago this year?

Mr. CROSS. Yes.

Senator JACKSON. You have been there 2 or 3 times in addition to time you and your wife were at Rhinelander, Wis.? What about in 1954?

Mr. CROSS. I was at his home in 1954.

Senator JACKSON. Was your wife with you?

Mr. CROSS. No.

Senator JACKSON. How many times in 1954?

Mr. CROSS. Once.

Senator JACKSON. Now, going back prior to 1954——

Mr. CROSS. I was there once before, I think.

Senator JACKSON. Once prior to 1954?

Mr. CROSS. Yes, sir.

Senator JACKSON. Do you have any idea when that was?

Mr. CROSS. It might have been the year before that; I am not sure.

Senator JACKSON. In 1953, probably?

Mr. CROSS. I can't be positive about that.

Senator JACKSON. Well, does it go away back, 1939?

Mr. CROSS. I think I was out to his place perhaps once away back then, and I know I was with him in Chicago, in 1939, and whether I was with him a number of times in Chicago, but whether we were out to their home, I don't recall.

Senator JACKSON. But you did visit with them?

Mr. CROSS. I wouldn't say it goes back to 1939; I would say it goes back to the middle forties, when my social acquaintanceship started.

Senator JACKSON. Did that involve visits to his home during the 1940's?

Mr. CROSS. It involved some meetings downtown in Chicago.

Senator JACKSON. How about visits to his home?

Mr. CROSS. We never have stayed at their home overnight.

Senator JACKSON. I don't mean stayed, I mean to call, to have dinner or come out to the house socially.

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. We didn't have dinner because it is custom of people in Chicago, that live away out, it is the custom to meet downtown and eat.

Senator JACKSON. Now, did Mr. Keeshin give you a memorandum of the details of his proposal as compared with the Parmalee proposal or the other proposal?

Mr. CROSS. No, he did not.

Senator JACKSON. Did he ever give you the details verbally?

Mr. CROSS. I don't think that he made any comparison, and I don't know how he could have a comparison.

Senator JACKSON. At any time, did he ever do that?

Mr. CROSS. No, not to my knowledge, not to my recollection.

Senator JACKSON. That is all, Mr. Chairman.

Senator ERVIN. You and Mr. Keeshin had been good friends for a period of about 15 years?

Mr. CROSS. That is right.

Senator ERVIN. And he told you that he had submitted a bid for this contract?

Mr. CROSS. That is right.

Senator ERVIN. And he made statements to you from which you implied that he was anxious for you to speak a good word for him in connection with the matter?

Mr. CROSS. He never asked me to speak a good word for him any more than he ever asked me to do him a favor on a case before the Commission.

Senator ERVIN. But you drew the implication from what he said?

Mr. CROSS. I could not draw that impression at all.

Senator ERVIN. Did you draw the impression, or the implication from anything that he said that he wanted you to assist him in any way, by a word of commendation or anything else?

(Senator Jackson left the hearing room.)

Mr. CROSS. I can't draw that at all. When these cases were up; he never mentioned them to me, and while I knew about this matter, he didn't ask me to go out and do anything for him.

Senator ERVIN. I thought that I understood you to say that while you don't remember exactly what he said, that inferentially he asked you to speak a good word in his behalf.

Mr. CROSS. He did ask me at one time to find out the status of it, and I think that that was the basis of my inquiry, with Mr. Simpson.

Senator ERVIN. Did he tell you at any time that the railroads had submitted the bids, or his bid and the other bids to a committee composed of representatives of 5 railroads, and that among those 5 railroads was the Baltimore & Ohio and the Chicago & Northwestern and the Illinois Central?

Mr. CROSS. No, sir, I didn't know the procedures that they went through on the bids.

Senator ERVIN. If you didn't know that the B. and O. Railroad had a representative on the committee that was passing on the matter, why did you call Mr. Simpson?

Mr. CROSS. Because he was close by, and because I had been in rather close contact with him on other matters.

Senator ERVIN. There are 21 railroads, I believe, that enter the Chicago area?

Mr. CROSS. Something like that, 20 or 21.

PLAINTIFF'S EXHIBIT 62 (Continued)

Senator ERVIN. No, did you feel that Mr. Feucht, or in other words, what I am trying to get at, did you call Mr. Feucht merely on account of your interest in the Chicago & Northwestern Railroad, or was it in part on account of your friendship for Mr. Keeshin?

Mr. CROSS. Mr. Keeshin never suggested that I call Mr. Feucht.

Senator ERVIN. How many times did Mr. Keeshin call you about this bid?

Mr. CROSS. I don't know. There were a good many telephone calls there, and some of them were between my wife and Mrs. Keeshin, and some of them on other matters, and some of them on politics.

Senator ERVIN. But he called you a number of times about this particular bid for this particular contract; didn't he?

Mr. CROSS. He never called me asking me to do anything on his bid.

Senator ERVIN. But that wasn't the question. My question was: If he didn't call you on a number of times and make reference or discuss in some way this bid?

Mr. CROSS. I think in conversations it was made reference to a number of times; yes, sir.

Senator ERVIN. And on no occasion did he ever ask you to do anything whatever for him?

Mr. CROSS. I never recall that he ever asked me to do anything for him.

Senator ERVIN. Could you suggest why it was that he merely talked to you about this contract if he didn't want you to do anything about it? I understood you to say that inferentially he asked you to speak a good word for him, or am I mistaken?

Mr. CROSS. Yes, he did not ask me to speak a good word for him. I think he was interested in nothing but knowing the progress of it, and I think my call to Mr. Simpson was based upon an inquiry that he made as to the status of it, and I inquired of Mr. Simpson as to the status of it, and that is all that I mentioned to Mr. Simpson.

Senator ERVIN. You called and you talked to Mr. Feucht because you were interested in Mr. Feucht, or rather the Chicago & Northwestern giving a contract to Mr. Keeshin; weren't you?

Mr. CROSS. No, I was interested in seeing that the best bidder got it, and that the Northwestern——

Senator IRVIN. I am asking you if in your conversation——

Mr. CROSS. I don't know what the other side was, and if the other side had the best bid, I was only interested in seeing that the railroad did the best thing for themselves.

Senator ERVIN. All I want to ask you is if in your conversation with Mr. Feucht, if you didn't argue that the bids submitted by the Keeshin Co. was superior to the bid submitted by Parmalee, and if you did not state to Mr. Feucht that the Parmalee bid had some jokers in it?

Mr. CROSS. I don't know what was in the Parmalee bid. I know that the Keeshin bid offered new equipment which was entirely different from what they had ever had before.

Senator ERVIN. Well, I don't believe that you answered my question.

Will you read the question please?

(Thereupon, the previous question as above recorded was read by the reporter.)

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. I didn't state that the Parmalee bid had any jokers in it. I didn't state that one bid was superior to the other. I asked him to investigate the merits of it, and weigh it, and I didn't have the information as to the two bids.

Senator ERVIN. That is the reason I am having a little trouble understanding why you called him, Mr. Cross.

Mr. CROSS. I thought that the North Western ought to go into it, and determine which was the best bid or the best offer.

Senator ERVIN. Didn't you think that Mr. Feucht as the president of the Chicago & North Western Railroad, and the other officials of the Chicago & North Western Railroad were determined before they entered into a contract whether it was advantageous to their railroad?

Mr. CROSS. I know the railroads would weigh the thing and try to do the best thing according to what the contracts offered.

Senator ERVIN. And you also were conscious of the fact, or you also assumed since you didn't know the details of the two bids, that they had more knowledge of the details of the bids than you did, didn't you?

Mr. CROSS. I suppose they had more knowledge of the bids than I had, because I only had knowledge of one side.

Senator ERVIN. That being true, and since you had no knowledge or no substantial knowledge of the terms of the two proposals, and since you assumed that the Chicago & Northwestern Railroad would be interested or would determine for itself which was the best bid for them from an economic standpoint, why did you bother to call them at all?

Mr. CROSS. Well, I have already answered that to the best of my ability.

Senator ERVIN. Suppose you try it again, because I haven't quite understood your answer.

Mr. CROSS. I felt it was to the interest of the Northwestern to give careful attention to the bids and award it to the best bidder.

Senator ERVIN. Didn't you assume that they would do so from their own standpoint?

Mr. CROSS. I didn't draw any conclusion evidently, or I would not have made the call, sir.

Senator ERVIN. That is just exactly——

Mr. CROSS. That is one of the reasons that I say the call was indiscreet and I should not have done it.

Senator ERVIN. You testified you were not requested by Mr. Keeshin to do anything whatever to assist him in getting the contract, and you state that you did not know the relative merits of the two contracts.

Mr. CROSS. I knew the Northwestern Railroad was in difficulties, and I felt that anything that they could do for themselves would be very helpful to them.

Senator ERVIN. So you called them up and said, "Decide this matter for yourself."

Mr. CROSS. I told them to weigh the bids.

Senator ERVIN. To weigh the bids?

Mr. CROSS. Yes; and consider them on the basis of merit.

Senator ERVIN. But you never suggested that one bid was better than the other or that you would prefer them to accept one of the bids rather than the other?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. I didn't say that one bid was better than the other because I didn't know the competitive features of them. If the other bidder had been the best, I think the Northwestern should have taken it, Senator.

Senator ERVIN. You were afraid that without the suggestion from you that the president of the Chicago & Northwestern Railroad might not take the trouble to find out which 1 of the 2 or more bids was the best for the railroad. And therefore you called him up to suggest that he decide the matter on the merits and take the one for the best economic advantage of his railroad. Is that correct?

Mr. CROSS. I assume that that is substantially correct, Senator.

Senator ERVIN. That is all.

The CHAIRMAN. Any further questions?

Mr. Kennedy the chief counsel would like to ask you a few questions.

Mr. KENNEDY. Mr. Cross, did you ever contemplate going to work for Keeshin or any one of his companies?

Mr. CROSS. I never contemplated going to work for Mr. Keeshin or anyone of his companies.

Mr. KENNEDY. Did you ever contemplate or was it ever discussed that you would go to work for this new corporation being set up?

Mr. CROSS. It was never discussed at all.

Mr. KENNEDY. On the telephone or otherwise?

Mr. CROSS. No.

Mr. KENNEDY. Did you ever mention to anybody that you might go to work for Mr. Keeshin or one of his companies?

Mr. CROSS. I didn't mention that I would ever go to work for Mr. Keeshin or any one of his companies for the reason that no offer was ever made to me.

Mr. KENNEDY. Well, you had a conversation with Mr. Wayne Johnston; is that correct?

Mr. CROSS. Yes.

Mr. KENNEDY. And during the course of that conversation, didn't you state to Mr Wayne Johnston that if Mr. Keeshin's interest received this contract, that you would go to work for that company?

Mr. CROSS. I think in that conversation in the spirit of levity, Mr. Johnston was kidding me and accusing me of doing it.

Mr. KENNEDY. Why?

Mr. CROSS. Well——

Mr. KENNEDY. You stated earlier Mr. Cross, that you never heard that anybody understood that you were going to work for the Keeshin Co.

Mr. CROSS. No.

Mr. KENNEDY. Did Mr. Wayne Johnston say that?

Mr. CROSS. I told you that down in Little Rock.

Mr. KENNEDY. Did Mr. Wayne Johnston understand that you were going to work for the Keeshin interests?

Mr. CROSS. He never understood it from me.

Mr. KENNEDY. Did he understand it from anyone?

Mr. CROSS. Not anyone that had any authority on my behalf, because there never was any representation made by me or anyone for me.

Mr. KENNEDY. Well, in your conversation with him, with Mr. Wayne Johnston, did you understand that he had heard that you were going to work for the Keeshin company?

PLAINTIFF'S EXHIBIT 62 (Continued)

Mr. CROSS. I think there was some reference that he was trying to kid me to find out whether I was or not.

Mr. KENNEDY. How did the conversation arise? Were you completely surprised that he should mention the subject?

Mr. CROSS. I know Wayne Johnston, and we kid back and forth, and I can't see anything wrong in a conversation, or he kidding me or me kidding him.

Mr. KENNEDY. Where did the conversation take place?

Mr. CROSS. I think it was in some informal gathering.

Mr. KENNEDY. So he came up and he said to you facetiously—or what was the conversation?

Mr. CROSS. My recollection is that he talked about the situation, and said, "Why don't you go to work for Keeshin?" or something of the kind.

Mr. KENNEDY. And what did you say?

Mr. CROSS. Well, I probably should have flatly denied it, and probably he was kidding me, but I said—I may have let the thing go without a flat denial.

Mr. KENNEDY. What did you say?

Mr. CROSS. I can't tell you the exact words, except that I never in my thinking had any realization that he meant it seriously.

Mr. KENNEDY. What did you say generally, if you can't tell me in your exact words? What did you say generally?

Mr. CROSS. I don't think that I gave him an answer on it, and I think it was passed by.

Mr. KENNEDY. Do you remember saying to him that you were going to work for Keeshin & Co. if Keeshin received this contract, Mr. Cross?

Mr. CROSS. No.

Mr. KENNEDY. Do you deny that you said that?

Mr. CROSS. I deny that I said that.

Mr. KENNEDY. Do you deny that you said anything like that, or anything similar to that?

Mr. CROSS. I deny that I said that I was going to work for Keeshin & Co. because there was no commitment.

The CHAIRMAN. Let me ask you a question there. Did you possibly say to him at that time, that if everything worked out all right, you would—that is, if everything worked out satisfactorily, that you would go to work for the Keeshin Co., or Keeshin and his company?

Mr. CROSS. Senator, my plans by that time were formulated, and I was to become or be the Chairman of the Commission and I had made up my mind that I was going to go through with my term as Chairman of the Commission, and I had no other plans in mind; that was, of any kind, practicing law, or anything else. As I told you before, at different times, I have contemplated entering the practice of law, but when it was due for me to become Chairman of the Commission, I gave up all of those plans and determined that I would go through this term.

(Senator McCarthy returned to the hearing room.)

Mr. CROSS. There was no commitment made to me, and I made no commitment for the future whatsoever.

The CHAIRMAN. Well, I have asked you the specific question because I am not fishing, and I am just asking you on the basis of information that we have before the committee, and I wanted to give you the

PLAINTIFF'S EXHIBIT 62 (Continued)

opportunity to refute it. The question is, and I will use as near the exact language as I can, "Did you say to him that if everything worked out satisfactorily, you would probably go to work for the Keeshin Co. or for Keeshin?

Mr. CROSS. I am sure that I didn't make any statement in those words.

The CHAIRMAN. Well, it is hard to get a direct quote unless you have it.

Mr. CROSS. It was done facetiously.

The CHAIRMAN. Would you have said anything to him at that time from which he would have inferred that if things worked out satisfactorily, you probably would go to work for Mr. Keeshin or for his company?

Mr. CROSS. If he posed the question to me, my denial may not have been such that he would have concluded it in positive terms, but let me say again, I did not, or I could not have said that because Mr. Keeshin never made any proposal to me one way or the other, to work for him. By that time I was committed to go through my term as Chairman of the Commission.

The CHAIRMAN. Mr. Keeshin had made a proposal to you in the past to work for his company, or one of his companies?

Mr. CROSS. No, there was no proposal. That was a proposal that this intrastate company, if it could be purchased, we might work something out, but it never got any further than that.

The CHAIRMAN. You have already testified that there was no further carryover or understanding about the future after that fell through?

Mr. CROSS. There was no carryover; no.

The CHAIRMAN. Are there any other questions?

Mr. CROSS. As a matter of fact, that was an established undertaking. This undertaking was one thing that I probably would be the last one in the world to want to get into, because it was a new operation of which I had no experience or knowledge.

The CHAIRMAN. Is there anything further?

Thank you very much, Mr. Cross. The Chair would advise you that you are still under subpena in the event that we need to interrogate you further. With your acknowledging that you are still under subpena all that would be necessary is for us to just call you and give you a reasonable time to appear.

Mr. CROSS. Do you care for copies of these documents?

The CHAIRMAN. They may be left on file with the committee, Mr. Cross, if you care to do that. You understand by that, that I don't mean to encumber the record by printing them all in there, but they can be on file as exhibits to your testimony for reference. That is, such as you think are pertinent.

Mr. CROSS. There are five cases for the record, and I might cite them:

Status of Parmalee Transportation Company, No. 30-940, decided March 11, 1953, Division 3, Patterson, Johnson, and Nutson, 288 ICC reports, page 95.

MC-F-4401, E. I. Company, Control, and Purchase, Keeshin Freight Lines, 57 MCC 341, decided November 6, 1950, and on reconsideration, 75 MCC 467, decided April 2, 1951.

PLAINTIFF'S EXHIBIT 62 (Continued)

MCF 5606, M. H. Clark, and Ruan Control, etc., Keeshin Freight Lines, decided January 29, 1954, and the same title, and the same number, report on further hearing, decided June 7, 1954.

The CHAIRMAN. Do you have any further statement to make, Mr. Cross?

Mr. CROSS. I would like to conclude with this thought:

I have been in public life 22¼ years. I have never had a finger or whisper of suspicion pointed at me before. This grieves me terribly. If I was guilty of indiscretions, I am very sorry, and I cannot believe that my action in any way affected those contracts.

Regardless of the stigma that may fall upon my shoulders and the shoulders of my wife, at our age, I can minimize that by saying that the greatest pain of all, the pain that I never can survive, would be any reflection that might fall upon the Interstate Commerce Commission, of which I am a member and of which I happen now to be Chairman. That would be the most grievous thing that I can think of in life itself.

The CHAIRMAN. Thank you very much, Mr. Cross.

You will acknowledge for the record that you are under a subpena, and subject to the call from the committee if the committee should find it necessary to call you?

Mr. CROSS. That is right.

The CHAIRMAN. Thank you very much.

(Senators present at the time of adjournment were Senators McClellan, Jackson, Ervin, and McCarthy.)

(The witness left the hearing room.)

(At 6:10, the committee adjourned, subject to the call of the Chair.)

PLAINTIFF'S EXHIBIT 62 (Continued)

APPENDIX

EXHIBITS

No. 2

TRANSFER OF PASSENGERS AND BAGGAGE BETWEEN STATIONS IN CHICAGO

A subcommittee of Chicago Terminal Lines, consisting of New York Central, Pennsylvania, Santa Fe, B. & O., C. & N. W., and I. C., have been considering a contract covering transfer of passengers and baggage between stations in Chicago. The Parmelee Co. and Keeshin Co. have both submitted bids. The 2 companies' final proposals are practically the same and contemplate for the first year beginning July 1, 1955, $1.20 per capita for each adult passenger, second year $1.22, third year $1.23. The contract would be for 5 years and for the remaining 2 years the rate would be on the basis of 1 cent increase for every 5 cents an hour increase in wages. If wages should be reduced, the escalator clause would work in reverse.

Keeshin proposes to put air-conditioned station wagons in the service with the necessary trailers and trucks to handle baggage between stations. The station wagons will be 5- and 7-passenger capacity. Parmelee states that they contemplate spending about $500,000 for the purchase of new equipment over a 5-year period. They propose to purchase 12 new passenger limousines within 18 months.

The special committee, charged with the duty of making a report for consideration by all Chicago lines, went out to Keeshin's place on the south side yesterday to view his equipment. They are favorably impressed with it. The New York Central (chairman), Pennsylvania, and Santa Fe definitely favor Keeshin's proposal. The B. & O. have not made any decision, awaiting arrival of their passenger traffic manager from Baltimore today. The North Western indicate they favor continuing with Parmelee. Our people have been leaning towards Parmelee because of the fact that they have been handling the business for so many years. However, after viewing the equipment Keeshin proposes to put into service, they are inclined to favor Keeshin provided a contract can be made with him which will guarantee first-class service. That will be our position at meeting today which Mr. Hearne will attend.

Last year Illinois Central paid Parmelee $72,000, New York Central $345,000, North Western $251,000. We do not have the 1954 figures for the other roads, but in 1953 the Santa Fe paid Parmelee $160,000, Pennsylvania $130,000, and B. & O. $61,000.

* * * * * * *

Later: The special committee met this morning and after calling Mr. Keeshin in for some additional information decided unanimously to recommend to the Chicago lines that Keeshin's proposal be adopted.

Further report will be made after the matter is passed on by the Chicago Terminal Lines committee.

R. A. TROVILLION.

JUNE 3, 1955.
Original, Mr. Johnston.
Copy: D. J. Hearne.

No. 3

CHICAGO, *April 27, 1954.*

MR. JOHNSTON: The Parmelee Co. appealed to the railroads last January for an increase from $1.05 to $1.25 per passenger and several meetings of passenger traffic officers of the Chicago Terminal Lines have been held from time to time since that date endeavoring to reach an agreeable charge for the services performed by the Parmelee Co. The Parmelee Co. have stated that they have a deficit amounting to $42,900 for the first 3 months of 1954.

PLAINTIFF'S EXHIBIT 62 (Continued)

At meeting April 26 the Parmelee Co. insisted that the rail lines absorb the deficit. However, the rail lines thought that the Parmelee Co. should assume 50 percent and the rail lines 50 percent. This was agreed to by all concerned and our portion of this deficit will be approximately $1,200 for the period from January to March.

Effective April 1 the rail lines will pay the Parmelee Co. $1.20 per adult coupon, 60 cents for child's coupon, and 85 cents for each military furlough passenger. Effective July 1, Parmelee expects a wage-increase demand from their personnel and if granted the rail lines will assume 1-cent additional for each 3 cents per hour wage increase, with a maximum of 3 cents per adult coupon. This agreement will be in force until June 30, 1955.

R. A. TROVILLION.

Copies: Mr. Fitzpatrick, Mr. Martin.

No. 4

CHICAGO, *June 13, 1955.*

MR. JOHNSTON: The Chicago Terminal Lines at a meeting today approved giving the Keeshin Co. contract for the transfer of passengers and baggage between stations in Chicago.

The Parmelee Co. will be given 90 days' notice from June 30 and Keeshin will take over the work on October 1.

R. A. TROVILLION.

Copy: Mr. Fitzpatrick.

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SUPREME COURT, U. S.

EXHIBIT VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL, PETITIONER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1961
CERTIORARI GRANTED DECEMBER 11, 1961

In the
United States Court of Appeals
For the Seventh Circuit

No. 13160

FARMELEE TRANSPORTATION COMPANY,

Plaintiff-Appellant,

vs.

JOHN L. KEESHIN, RAILROAD TRANSFER SERVICE, INC., HUGH W. CROSS, THE NEW YORK CENTRAL RAILROAD COMPANY, HOWARD E. SIMPSON, PAUL E. FEUCHT, WAYNE A. JOHNSTON, FRED G. GURLEY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, CHICAGO & NORTH WESTERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD and THE PENNSYLVANIA RAILROAD COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius H. Miner, Judge Presiding.

EXHIBIT VOLUME II

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The Scheffer Press, Inc.—ANdover 3-6850

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PLAINTIFF'S EXHIBIT 63

84TH CONGRESS 2d Session	SENATE	REPORT No. 1444

ANNUAL REPORT

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

MADE BY ITS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Plaintiffs Exhibit 63 Defendants Exhibit ( ) Ident. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division No. BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

FILED

AUG 15 1960

AT ..... O'CLOCK .....
ROY H. JOHNSON

JANUARY 25 (legislative day, JANUARY 16), 1956.—Ordered to be printed

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PLAINTIFF'S EXHIBIT 63 (Continued)

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PLAINTIFF'S EXHIBIT 63 (Continued)

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84TH CONGRESS } SENATE { REPORT
2d Session } { No. 1444

ANNUAL REPORT

JANUARY 25 (legislative day, JANUARY 16), 1956.—Ordered to be printed

Mr. MCCLELLAN, from the Committee on Government Operations, submitted the following

REPORT

MADE BY ITS PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

INTRODUCTION

The Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, pursuant to the Legislative Reorganization Act of 1946, is charged with the duty of studying the operation of Government activities at all levels with a view to determining their economy and efficiency. This task is a huge one, particularly when we consider that the professional staff of the subcommittee consists of only 11 members. The executive branch, at a cost of over 53 billions of dollars, operates several hundred separate departments, agencies, and independent offices employing 2,366,075 civilians alone.

At the beginning of the year the subcommittee adopted certain rules of procedure which were as follows:

1. No major investigation shall be initiated without approval of either a majority of the subcommittee or a majority of the full Committee on Government Operations. However, preliminary inquiries may be initiated by the subcommittee staff with the approval of the chairman of the subcommittee.

2. Subpenas for attendance of witnesses and the production of memorandums, documents, and records shall be issued by the subcommittee chairman or by any other member of the subcommittee designated by him.

3. The chairman shall have the authority to call meetings of the subcommittee. This authority may be delegated by the chairman to any other member of the subcommittee when necessary. The chairman shall not schedule any hearings or series of hearings outside the District of Columbia without giving at least 48 hours' notice thereof to the members of the subcommittee.

No public hearing shall be held if the minority members unanimously object, unless the full Committee on Government Operations by a majority vote approve of such public hearings.

PLAINTIFF'S EXHIBIT 63 (Continued)

4. Should a majority of the membership of the subcommittee request the chairman in writing to call a meeting of the subcommittee, then in the event the chairman should fail, neglect, or refuse to call such a meeting within 10 days thereafter, such majority of the subcommittee may call such meeting by filing a written notice thereof with the clerk of the subcommittee, who shall promptly notify in writing each member of the subcommittee.

5. Any two members of the subcommittee shall constitute a quorum for the purpose of taking testimony under oath in any given case or subject matter before this subcommittee, as authorized by Senate Resolution 180, 81st Congress, 2d session.

6. All witnesses at public or executive hearings who testify to matters of fact shall be sworn.

7. Counsel retained by any witness and accompanying such witnesses shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness while he is testifying, of his legal rights; but this shall not be construed to excuse a witness from testifying in the event his counsel is ejected from contumacy or disorderly conduct; nor shall this rule be construed as authorizing counsel to coach the witness, answer for the witness, or put words in the witness' mouth. The failure of any witness to secure counsel shall not excuse such witness from attendance in response to subpena.

8. Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the counsel or chairman of the subcommittee 24 hours in advance of the hearings at which the statement is to be presented. The subcommittee shall determine whether such statement may be read or placed in the record of the hearing.

9. A witness may request, on grounds of distraction, harassment, or physical discomfort, that during his testimony, television, motion picture, and other cameras and lights shall not be directed at him, such request to be ruled on by the subcommittee members present at the hearing.

10. An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his own testimony whether in public or executive session shall be made available for inspection by witness or his counsel under committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness at his expense if he so requests.

11. Interrogation of witnesses at subcommittee hearings shall be conducted on behalf of the subcommittee by members and authorized subcommittee staff personnel only.

12. Any person who is the subject of an investigation in public hearings may submit to the chairman of the subcommittee questions in writing for the cross-examination of other witnesses called by the subcommittee. With the consent of a majority of the members of the subcommittee present and voting, these questions shall be put to the witness by the chairman, by a member of the subcommittee, or by counsel of the subcommittee.

PLAINTIFF'S EXHIBIT 63 (Continued)

13. Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a subcommittee member or counsel, tends to defame him or otherwise adversely affect his reputation, may (*a*) request to appear personally before the subcommittee to testify in his own behalf, or, in the alternative, (*b*) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the subcommittee for its consideration and action.

14. All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the subcommittee.

15. No subcommittee report shall be released to the public without the approval of a majority of the subcommittee.

16. All staff members shall be confirmed by a majority of the subcommittee. After confirmation, the chairman shall certify staff appointments to the financial clerk of the Senate, in writing.

17. The minority shall select for appointment to the subcommittee staff a chief counsel for the minority who shall, upon being confirmed, work under their supervision and direction; who shall be kept fully informed as to investigations and hearings, have access to all material in the files of the subcommittee, and, when not otherwise engaged, shall do other subcommittee work.

One clerk on the subcommittee staff, acceptable to it, shall be assigned to the minority. When not otherwise engaged such clerk shall be assigned other duties for the subcommittee.

The subcommittee, during this past year, conducted 79 actual investigations and 67 preliminary inquiries. Thirty-six days of open hearings were held and 91 witnesses heard. In addition there were 12 days of executive sessions at which 28 witnesses were heard.

The subcommittee's hearings extended through the operations of many of the Government agencies, including the Department of the Army and Agriculture, the Foreign Operations Administration, the Air Force, the State Department, Treasury Department, Navy Department, the Interstate Commerce Commission, and the Department of Commerce.

It covered such widespread activities as the Army loyalty security procedures, exemplified by the Peress case; conflict-of-interest matters at Cabinet and other levels, as in the hearings on former Secretary of Air Harold E. Talbott and Hugh Cross, the former Chairman of the Interstate Commerce Commission. Hearings were held on what steps were being taken or could be taken to obtain the release of American nationals held by the Red Chinese Government. It included studies of waste and inefficiency in the procurement and construction of grain bins by the Commodity Credit Corporation of the Department of Agriculture and the deficiencies of the Naval Inspection Service; possible collusion and fraud in the negotiation for the award for the construction of grain elevators in Pakistan by a consulting engineer hired by the Foreign Operations Administration; fraud and corruption in the procurement of military apparel by the armed services, as illustrated by the hearings on Harry Lev, Marvin Rubin, and others; a study of the infiltration of Communists in the

PLAINTIFF'S EXHIBIT 63 (Continued)

vital areas of defense plants and the inquiry on redefection of refugees in Europe back to Communist nations, as well as the failure by the Treasury Department to enforce tariff restrictions on watches which is alleged to have cost the United States Government many millions of dollars over the period of the past 25 years. In addition, a continuing study is being made of East-West trade and export controls on materials going to Communist-dominated nations.

Legislative investigations to be worthy should accomplish a constructive result. In addition to serving as a basis for legislation, they also serve the important function of bringing to light the existence of conditions which need corrective action. All too often instances have been uncovered by legislative committees of failure to abide by the letter and spirit of our laws, rules, and regulations, and it is only after the legislative investigation that effective action is taken to remedy such conditions.

The subcommittee is proud of its constructive record. In the Peress matter, the hearings revealed that some 48 errors were committed by the Army in connection with the commissioning, transfer, promotion, and honorable discharge of Peress. As a result of these hearings the Army took 19 corrective measures in order to uncover and deal with security cases.

Because of what was uncovered by the investigations and hearings in the domestic grain-bin program, the Department of Agriculture and the Naval Inspection Service have instituted 21 corrective measures.

In the investigation conducted in connection with the procurement of military hats, bribery, perjury, collusion and fraud, and improper inspection were revealed, as well as the method of making large secret profits through deviations at the expense of the Government. As a result of these hearings, claims are now being pressed by the Government for over a half million dollars on these improper profits. Two Army, one naval, and one Treasury Department employees were dismissed from Government service. An Air Force officer resigned in the face of a court-martial. Twelve persons and corporations were suspended and two others were debarred and placed on the Consolidated List of Debarred Ineligible and Suspended Bidders. New procedures were instituted in procurement of patented components which will save the Government in the future hundreds of thousands of dollars.

In the FOA Pakistan grain elevator case, the subcommittee's uncovering of strong evidence of collusion in the negotiations for the award of the contract prevented FOA from granting a contract to the apparent high bidder and saved the Government possibly a million dollars.

Its investigation of conflict-of-interest situation resulted in the resignation of Air Secretary Harold E. Talbott and Hugh Cross as Chairman of the Interstate Commerce Commission.

The investigation was continued with regard to Communists in defense plants, and several witnesses were called from Allis-Chalmers, Fitchburg, Mass.; Bethlehem Steel Corp., Bethlehem, Pa.; and General Electric Co., Schenectady, N. Y.

It is difficult, if not impossible, to calculate the actual monetary savings accomplished by the legislative investigations of this subcommittee. It is evident, however, that although such savings are impor-

PLAINTIFF'S EXHIBIT 63 (Continued)

tant, of greater importance is the subcommittee's function as a deterrent to improprieties on the part of those in Government and those dealing with the Government. The watchdog functions of the subcommittee in the field of general Government operations serves an extremely useful and essential purpose as a check and balance on the executive departments.

It should be noted also that these investigations were conducted with an appropriation of $190,000 and that approximately $15,000 of this amount will be unexpended and therefore returned to the Treasury of the United States.

The subcommittee wishes to express its sincere appreciation to the General Accounting Office for assigning two investigators to the subcommittee and for the very major assistance rendered in many ways during the past year.

It is also most grateful to the Senate Committee on Appropriations for the assignment of Paul E. Kamerick to assist this subcommittee.

Army Personnel Actions Relating to Irving Peress

The purpose of this inquiry was to develop all the true facts and circumstances attending the Department of the Army's handling of the induction, change of orders, promotion, and honorable discharge of Dr. Irving Peress. In preparing for public hearings, the subcommittee staff conducted a 6-week preliminary investigation. The hearings of the Army personnel actions relating to Irving Peress commenced March 15 and ended March 31, 1955. A total of 22 witnesses testified before the subcommittee and interrogatories were taken of 2 additional witnesses. The record is supported by a total of 91 exhibits.

On January 30, 1954, Maj. Irving Peress, a dental officer assigned to Camp Kilmer and on active duty since January 1, 1953, appeared before the Senate Permanent Subcommittee on Investigations and invoked the fifth amendment in response to certain questions, among which were—

> Was he then or had he ever been a member of the Communist Party?
>
> Had he attended leadership courses at the Inwood Victory Club of the Communist Party?
>
> Had he attempted to recruit military personnel at Camp Kilmer into the Communist Party?
>
> Had he acted under orders from Communist Party functionaries while at Camp Kilmer?
>
> Had Communists intervened to have his overseas orders canceled?
>
> Had Communists assisted him in securing a promotion to major?

The fact that an Army officer invoked the constitutional privilege to questions of this nature caused the subcommittee grave concern. Questions were thereby raised, not only as to the effectiveness of the Army's program of dealing with subversives, but also whether the circumstances surrounding the original appointment of Peress, his subsequent change of orders, and his promotion had been, in fact, inspired by subversive interests.

PLAINTIFF'S EXHIBIT 63 (Continued)

The subcommittee's concern was not lessened by the Army honorably discharging Irving Peress on February 2, 1954. This was particularly true since this action was taken in apparent disregard of a February 1 letter from Senator McCarthy, the chairman of the subcommittee at that time, to the then Secretary of the Army, Robert T. Stevens, indicating that the subcommittee was in possession of sufficient information to warrant court-martial proceedings against Peress.[1]

Subsequent developments revealed that the Army had been in possession of unfavorable security information concerning Peress for a considerable period of time but irrespective thereof he was promoted to the grade of major and later discharged under honorable conditions.

This subcommittee reached the following conclusions with respect to the Army's handling of Maj. Irving Peress:

I. The Secretary of the Army, or his superiors in the Department of Defense under whose directions he may have been acting, are to be criticized for the delay of almost 1 year before the facts concerning the Peress case were publicly released. Such unnecessary delay served to unduly arouse and increase suspicions of the public as to possible Communist influences and thereby was a disservice not only to Army personnel involved in the Peress case, but also to the Army as a whole, to this subcommittee, to the Congress, and to the general public.

II. Mr. John Adams, Counselor, Department of the Army, showed disrespect for this subcommittee when he chose to disregard Senator McCarthy's letter of February 1, 1954, and allowed Peress to be honorably discharged on February 2, 1954.

III. The list of the 28 officers which was submitted by the Department of the Army as having taken an active part in the personnel actions concerning Irving Peress was deceptive and a gross imposition on the special Mundt subcommittee, and also on this subcommittee.

IV. The Inspector General's investigation of the Peress matter was inadequate, demonstrating inefficiency.

V. Had the Inspector General's report on Irving Peress been furnished to this subcommittee, as was the Inspector General's report on Pvt. G. David Schine to the special Mundt subcommittee, the preliminary investigation by this staff and the public hearings held by this subcommittee would have been expedited. This apparent inconsistent policy of responsible officials in the Department of Defense and the Department of the Army would seem to indicate that the criterion for furnishing such reports to Congress was whether they are or are not favorable to the department involved.

VI. Irving Peress' promotion, change of orders, and honorable discharge were the result of a combination of factors: Individual errors in judgment, lack of proper coordination, ineffective administrative procedures, inconsistent application of existing regulations, and excessive delays.

VII. During the period of time Peress was in the service, there was no well-defined policy or prescribed procedures in the Army which would insure the effective handling of security risks.

---

[1] Secretary Stevens was out of the country and did not personally receive the letter until sometime later.

PLAINTIFF'S EXHIBIT 63 (Continued)

VIII. Although the Army had urgent requirements for doctors, dentists, and veterinarians during the Korean conflict, expeditious processing of these specialists could have been accomplished without sacrificing fundamental security safeguards. Had such initial safeguards been retained, Irving Peress would not have been tendered a commission, and thus would not have served for 13 months as an officer on active duty.

IX. At no time when Peress was on active duty, between January 1, 1953, and February 2, 1954, was any investigation or surveillance conducted by G–2 to determine his activities while in the Army with the exception of a most superficial spot check at Camp Kilmer.

X. Much of the difficulty attendant the Peress case was due not only to the failure of the Army to assign adequate personnel to G–2 both in the field and at headquarters in Washington, but also to the practice of filling responsible G–2 positions with officer personnel untrained and inexperienced in the field of intelligence. These practices strongly suggest a lack of appreciation of the importance of intelligence, particularly in these times. The field of intelligence is a specialized one, and effective results are not attainable therefrom unless it is treated as such.

XI. G–2 policy of transmitting copies of investigative reports from one field command to another where the subject is assigned, through G–2 headquarters, Washington, rather than directly to the command in the field, as well as to G–2 Washington, produces unnecessary delay in apprising the command of facts concerning personnel under its jurisdiction that might require immediate protective measures.

XII. With respect to the cases presented to it, the Army personnel board must make recommendations seriously affecting the future of each individual concerned. Under these circumstances, no recommendation should be made except after a most careful and thorough consideration of each case by the board members. Such consideration cannot be expected of any three-man board handling hundreds of cases each month.

XIII. Some 48 errors of more than minor importance were committed by the Army in connection with the commissioning, transfer, promotion, and honorable discharge of Irving Peress. It is, of course, realized that certain of these errors, such as the failure of an individual to exercise good judgment, are not susceptible to being corrected by procedural changes. However, the Army has taken corrective action applicable to 19 of the 48 errors committed. The subcommittee found the failure of responsible Army officials to effect most of these changes until after the Peress case became an incident of national interest to be inexcusable.

The subcommitte made the following recommendations:

I. That the Department of the Army establish procedures within the Army personnel board which will not only insure that each member thereof approve the board's recommendation as prepared by the recorder but also that the G–1 interpretation of the board's recommendation is in consonance with the intent of the individual board members. In this respect, the subcommittee specifically recommends:

1. That an adequate record system be maintained whereby the intent of each board member will be clearly revealed in every case; and

PLAINTIFF'S EXHIBIT 63 (Continued)

2. That each board member review and approve the board's final recommendation as prepared by the recorder prior to forwarding to G–1 for implementation.

II. That sufficient personnel be assigned to the Army personnel board to insure a thorough and careful consideration of all cases presented to it.

III. That the Army take appropriate steps to insure that officers assigned to the Army personnel board are qualified in personnel and security matters and are familiar with applicable regulations and procedures.

IV. That the Secretary of the Army cause a study to be made of the procedures and policies governing the operation of the Office of the Inspector General and that corrective action indicated thereby be taken to improve the efficiency of that Office.

V. That the Army undertake not only to adequately staff G–2 offices in the field and at headquarters in Washington but also to assign thereto personnel properly qualified for intelligence work from the standpoint of both training and experience.

VI. That the practice of forwarding G–2 investigative reports from one field command to another through G–2, Washington, be discontinued. It is recommended that copies of such reports be sent directly to the command in the field, thus precluding unnecessary delay in its being apprised as to matters of interest pertaining to its command. At the same time copies of these reports should be sent to G–2, Washington.

VII. That G–2 investigative personnel be required to familiarize themselves with all forms relating to security; that as a matter of course all such forms be examined during a security investigation; and that all pertinent information revealed therein be included in investigative reports.

VIII. That the Department of the Army require G–2 officers in the field to advise commanding officers immediately of derogatory security information relating to personnel under their command. In this respect it is recommended that existing regulations which provide that intelligence reports remain in intelligence channels until a specific command is required to take action be amended accordingly.

IX. That G–2 conduct appropriate active investigation and surveillance of personnel still on active duty who have been determined to be security risks or concerning whom there is sufficient evidence of subversion or disloyalty.

SUMMARY OF INDIVIDUAL VIEW

Senator George H. Bender did not sign the report but submitted his individual views which are summarized as follows:

The purpose of the investigation into the Peress matter, as I understood, was to determine principally whether there existed any subversive collusion or Communist conspiracy in the Army that caused the induction, promotion, and reassignment from duty overseas of this dentist. A great hue and cry continued for nearly a year for the identity of the Communist conspirators and the "silent Communist master of the Pentagon" who "protected" and "covered up" the affairs of this "fifth-amendment Communist."

I think it is of paramount importance that this subcommittee should assure the people of this country that no Communist influence was found in the Army.

Yet, there is not one word in this subcommittee report to inform the American public that not one iota of evidence was revealed to indicate any subversion, collusion, or Communist conspiracy concerned with the handling by the military of the Peress matter. It seems to me that this was the important question the American people and the Congress desired answered.

PLAINTIFF'S EXHIBIT 63 (Continued)

I cannot agree with the conclusion of the subcommittee that the Secretary of the Army, or his "superiors in the Department of Defense under whose direction he was acting," performed a disservice to the American people, the Congress, and the subcommittee by not revealing for nearly 1 year the facts of Peress' military career.

The report of the subcommittee detailed the efforts of the Secretary of the Army and high Government officers to acquaint the public and the Congress with the fact that this case was due to errors. The subcommittee report confirmed these statements in its findings and presented many minor personnel failures in support of the finding.

These efforts do not amount in my estimation to a "disservice" in any degree.

I think that the testimony gives ample ground to recommend that individuals experienced and trained in personnel and security matters should be assigned to duty thereon.

FOA Grain Elevators in Pakistan

Senator Stuart Symington, of Missouri, by letter dated January 11, 1955, to Senator John L. McClellan, chairman, requested investigation into the negotiation then being carried on by the Foreign Operations Administration (FOA) for the construction of grain storage elevators in Pakistan. Senator Symington pointed out that the Columbian Steel Tank Co., of Kansas City, Mo., had submitted the low bid of $1,448,917.40 for the construction of these elevators and that it was the expressed intention of Harold E. Stassen, Director of FOA, to negotiate a contract with the Agricultural Construction Co., of Los Angeles, Calif., which was the highest bidder in the competition with a figure of $2,430,979.56, this amount being in excess of the low bid by $982,062.16.

The first step was a request by Senator McClellan to Director Stassen on January 21, 1955, to make available to the subcommittee all of the FOA files on this matter. It was only after repeated requests that on February 11, 1955, Mr. Stassen finally turned over to the subcommittee a limited number of documents. Subsequently, additional material from the FOA's records was made available, but only for review by a staff investigator.[2]

When copies of certain documents were requested, Mr. Stassen refused to furnish them. He also refused to furnish the names of the officials who had served as project managers.

When the subcommittee learned that Mr. Howard P. Morrison, an FOA official, had served as one of the project managers, it requested the FOA to make Mr. Morrison available for interview and again, on instructions of Mr. Stassen, this was refused. As a result of these tactics the subcommittee had to issue subpenas for Mr. Stassen as well as other FOA officials with whom it was necessary to confer in order that the investigation might proceed.

Inquiry disclosed that the FOA mission in Pakistan issued invitations to bid in June 1954 for the construction of three grain storage elevators in Pakistan. The opening of the bids took place in Karachi, Pakistan, on August 23, 1954. Robert H. Pinner was the grain-storage engineer hired by the Ralph M. Parsons Co., of Los Angeles, and sent to Pakistan as grain-storage consultant to the FOA mission there. In this capacity Pinner was most influential in all decisions on grain-storage matters. After the opening of the bids in Pakistan, Pinner made a detailed analysis of the bids and rendered a decision that only the Agricultural Construction Co., the apparent high

[2] Hearings were held on FOA Grain Storage Elevators in Pakistan, March 31; April 6, 14, 15; and May 3, 1955, pts. 1 and 2.

PLAINTIFF'S EXHIBIT 63 (Continued)

bidder in this competition, met all the specifications. He recommended that the contract be awarded to the Agricultural Construction Co. Pinner then personally carried the bids back to Washington, D. C., stopping en route in Los Angeles, Calif. (Senator Karl E. Mundt disagrees with the use of the terms "high bidder" and "low bidder" throughout this report and disassociates himself from any comparisons and criticisms stemming from attempts to compare the bid figures since he feels the hearings brought out clearly that these were "design bids" rather than bids based on prescribed specifications. Thus bidders were submitting prices on different sets of specifications, and Senator Mundt holds that price comparisons under these circumstances are not accurate. Conflicting testimony was received as to exactly what type of bid FOA intended. FOA deserves criticism for not spelling out more accurately its intent and the specifications on which it was to accept bids, but not for ignoring or rejecting the "low bidder" under circumstances where bidders were not competing against each other on the same specifications or materials.)

At the Washington, D. C., headquarters of FOA a contracting committee and an ad hoc review committee were appointed to analyze the bids. These committees found that, contrary to Pinner's opinion, all five of the competing bidders had substantially met the specifications. They held, however, that since each bidder was bidding on his own plans, and that it was now decided to change the specifications, additional detailed information should be obtained from each company to put all on an equitable basis for price comparisons. This view was upheld by D. A. FitzGerald, Deputy Director to Mr. Stassen. However, before this could be accomplished, Director Stassen intervened, holding up further action until he could personally go into the case. After holding a conference with officials of the Agricultural Construction Co., Mr. Stassen notified his organization that FOA would proceed to negotiate with the Agricultural Construction Co. for the contract.

On March 28, 1955, Mr. Stassen wrote the chairman that unless the subcommittee had an "adverse view," he intended to proceed with negotiations with the Agricultural Construction Co. for a contract.[3] At that time he was cognizant that Alfred E. Poulsen, chief engineer of the Agricultural Construction Co., had recommended Robert H. Pinner to the consulting engineer's position with FOA, that it was Pinner's recommendation that the Agricultural Construction Co. receive the contract, and that the Agricultural Construction Co. was the apparent high bidder. He was also aware that his own ad hoc review committee, contract committee, and Deputy Administrator had agreed that Pinner's recommendations should not be followed.

When Robert H. Pinner first testified, he denied there had ever been any communications whatever between himself and Poulsen during the preparation of the bids. Subsequently other witnesses, including Alfred E. Poulsen, testified to frequent communications between Pinner in Pakistan and Poulsen in Los Angeles regarding the preparation of the bid and said that Pinner, en route from Pakistan to Washington, D. C., met in Los Angeles with officials of the Agricultural Construction Co. Pinner then reappeared before the subcommittee, admitted his previous untruthful testimony, and told of his assistance to Poulsen in the preparation of the Agricultural Construc-

[3] Hearings, FOA Grain Storage Elevators in Pakistan, pt. 2, p. 263.

PLAINTIFF'S EXHIBIT 63 (Continued)

tion Co. bid. As a result of this the Parsons Co. discharged Pinner immediately.

Director Stassen announced his intention to reject all bids, hire an independent engineering company to draw up specifications for a fixed design, and then submit new invitations to bid. He further stated that, in view of the evidence of favoritism unearthed by this subcommittee, the Agricultural Construction Co. would not be given a new opportunity to bid nor would any firm with whom Robert H. Pinner or Alfred E. Poulsen was connected.

Director Stassen volunteered that there might be some unethical activity on the part of Mr. Gideon Hadary, of the Columbian Steel Tank Co., the low-bidding firm in this competition, and Mr. Howard P. Morrison of his own organization, and the FOA was conducting an investigation into the matter and would furnish the subcommittee a copy of its report. The investigative report submitted to the subcommittee by the International Cooperation Administration (successor organization to FOA) [4] on November 17, 1955, states there is no evidence to substantiate the allegations.

From its investigation the subcommittee concluded that—

1. In the investigation of this case the subcommittee was hampered by the delaying tactics of Mr. Stassen, Director of the Foreign Operations Administration. He was most uncooperative for a public official, as illustrated by his attempts to hinder and impede the legitimate functions of this subcommittee.

2. There was strong evidence of collusion between the officials of the Agricultural Construction Co. of Los Angeles, Calif., and Robert Pinner, the engineer employed for the FOA to handle the contract for grain bins in Pakistan. As a result it was originally recommended that the Agricultural Construction Co. be awarded the contract.

3. If it had not been for the investigation conducted by this subcommittee, Harold E. Stassen, Director of FOA, would have made the award of the contract to the Agricultural Construction Co. This investigation, therefore, has affected a substantial savings to the United States Government, possibly amounting to $982,062.16.

4. Mr. Stassen exercised poor judgment and used bad business practice when he indicated as late as March 28, 1955, that he intended to negotiate the contract with the Agricultural Construction Co. At that time he was cognizant that Mr. Poulsen of the Agricultural Construction Co. had recommended Mr. Pinner for the job with FOA; that the Agricultural Construction Co. was the apparent high bidder; that many major changes had been made in the original invitation to bid; and that his own ad hoc review committee, contract committee, and Deputy Administrator had agreed that Pinner's recommendations should not be followed.

5. The FOA is to be criticized for failing to furnish specific plans and specifications with its original invitation to bid. The ambiguity of the bids as issued caused confusion and misunderstanding and opened the door for possible collusion and favoritism.

6. Mr. Howard P. Morrison and other officials of FOA who opposed awarding the contract to the Agricultural Construction Co. until all qualified bidders had been given an opportunity to

[4] On July 1, 1955, the FOA became the International Cooperation Administration of the U. S. Department of State.

PLAINTIFF'S EXHIBIT 63 (Continued)

compete on the basis of the major changes made in the bid invitation are to be commended for using sound business judgment.

7. FOA is to be criticized for the excessive and unnecessary delay in its handling of this Pakistan grain bin contract where the time element was deemed of such importance. It indicates that the activities of the agency in this matter were inefficiently administered.

8. Mr. Stassen's irresponsible and unsubstantiated implications in open hearing against Mr. Gideon Hadary of the Columbian Steel Tank Co. and certain personnel within his own organization were reprehensible for a high Government official.

The subcommittee recommended that the International Cooperation Administration should make a study of the procedures followed by FOA in the handling of contracts and take necessary corrective action to improve economy and efficiency. An effort should be made to eliminate misunderstandings among bidders and avoid the expensive waste of time that occurred in this case. This is important not only for the sake of efficiency, but for the effect that lack of proper procedure can have on our relationship with friendly governments. The following are some specific corrective recommendations:

(1) Wherever possible, contracts should be awarded by competition.

(2) Invitations to bid should be sent out and the contract awarded to the lowest responsible bidder. If a bidder is low but deemed not responsible, the reasons for that finding should be made public. If there is any other reason for not awarding the contract to the low bidder, then all the bids should be dismissed and new invitations to bid issued.

(3) If a low dollar competition is not possible, then the reasons therefor should be made public.

(4) Invitations to bid should be sufficiently detailed and clear to prevent misunderstandings by competing bidders.

(5) In submitting invitations to bid, if there are elements such as types of design, which will be a controlling factor in the award of a contract, that information should be published and also set forth clearly in the tender.

INDIVIDUAL VIEW

Senator George H. Bender did not sign the report but submitted his individual view, which is as follows:

"I dissent from the majority report of the subcommittee because I consider it to be inaccurate and unfair. Mr. Stassen is an honorable, capable, and patriotic man, and there is absolutely no evidence to the contrary in the record of the hearing of the subcommittee.

"The record shows that Mr. Stassen stopped the letting of a contract in December 1954, when the first adverse claims were made, and this action on his part was long before this subcommittee first entered the matter on January 11, 1955.

"The record further shows that Mr. Stassen did not enter a contract with any of the bidders, that no commitment of United States funds was made to any of the bidders at any time, and that when the charges and countercharges and the comments of Members of Congress could not be resolved, Mr. Stassen rejected all bids.

PLAINTIFF'S EXHIBIT 63 (Continued)

"The record further shows that Mr. Stassen's earlier action in asking that negotiations be started with the Agricultural Construction Co. was in accord with the recommendation of the director of the United States operations mission in Pakistan, who was working with the Government of Pakistan, and was based on the preference of the design and the machinery proposed by that bidder.

"The record further shows that the bids were not for comparable cost items, that a large item of $720,000 for services and training of Pakistanis was in 1 bid and not in a proportionate manner included in the so-called low bid and that the machinery and design of each bid was different.

"Mr. Stassen offered his cooperation in his first letter to the subcommittee; the only difficulty arose when he insisted that employees of FOA should have the right of counsel when summoned before the subcommittee investigators and that star-chamber sessions should not be held with FOA employees. In this he was right, and the subcommittee met his objection in part by permitting private counsel, and when this was done there were no further questions of cooperation between the subcommittee and Mr. Stassen.

"Mr. Stassen told the subcommittee of the investigation of Mr. Hadary, a former FOA employee representing one of the bidders, only in relation to the charges and countercharges that had been made to him by bidders and Congressmen, and he agreed to report the results of this investigation to the subcommittee. Mr. Stassen did not make any charges against Mr. Hadary, as the record of the subcommittee shows. He would have been wrong if he had withheld this phase of the situation from the subcommittee."

Communist Infiltration in Defense Plants

This subcommittee, under its obligation to make examinations into the operation and efficiency of the executive departments of the Government, continued its investigation into the matter of infiltration by the Communists into defense plants. This subcommittee held a public hearing on May 10, 1955, at which time six witnesses were heard.[8]

James W. Glatis, an affirmative witness, said that he joined the Communist Party in Boston, Mass., area in 1949 at the request of the Federal Bureau of Investigation. He remained a member until May 25, 1954, when he testified before the Subversive Activities Control Board in behalf of the Government. He testified that Charles Wojchowski was a leading figure in the Labor Youth League, an organization listed as subversive by the Attorney General of the United States.

Charles Wojchowski, 107 Brunswick Street, Dorchester, Mass., thereafter testified and took the fifth amendment as to membership in the Communist Party. As a direct result, he was discharged on May 19, 1955, by the Allis-Chalmers Co., Fitchburg, Mass., which has approximately $1 million in Federal Government contract work.

Herman Thomas, an undercover informant for the FBI in the Communist Party for approximately 10 years in the Lehigh Valley area of Pennsylvania, testified that he knew Charles William Erney as a member of the Bethlehem Steel Club of the Communist Party.

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[8] Hearings, Communist Infiltration in Defense Plants, pt. 1, May 10, 1955.

PLAINTIFF'S EXHIBIT 63 (Continued)

Charles William Erney, an employee of the Bethlehem Steel Corp. Bethlehem, Pa., was subpenaed to appear but did not do so due to reason of illness. It is contemplated that Erney will be heard in the next scheduled hearing dealing with this subject matter. The Bethlehem Steel Corp. has a substantial amount of Government contract work, much of which is classified.

William DeLos, of Amsterdam, N. Y., an employee of General Electric Co., Schenectady, N. Y., who in executive session before the subcommittee previously had taken the fifth amendment as to Communist Party membership, testified that he was a member of the Schenectady branch of the Communist Party from 1948 to 1952. He testified that he would cooperate with the FBI. Accordingly, the FBI was so advised on May 11, 1955. General Electric Co. has several millions of dollars worth of defense work.

Robert LaFortune, of Troy, N. Y., an employee of General Electric Co., Schenectady, N. Y., who in executive session before the subcommittee previously invoked the fifth amendment as to Communist Party membership, testified that he had been a member of the Communist Party from 1934 to 1938 or 1940. LaFortune testified that he was cooperating with the FBI and would continue to do so.

Michael Sam, of 428 Robin Street, Dunkirk, N. Y., an employee of the United Steel Workers of America–CIO, requested and was granted the right to testify before the subcommittee under rule 13 of the rules of procedure of this subcommittee.[6] Michael Sam was shown a copy of a document bearing the heading, "Communist Party Independent Nominating Petition" to the secretary of state of the State of New York, which contained the signature of one Michael Sam, 428 Robin Street, Dunkirk, N. Y., dated August 6, 1946. Mr. Sam testified that the signature and address appearing on the above-mentioned document looked like his handwriting, but insisted that it was a forgery and that he could not recall signing this petition. He testified that he was not now nor ever had been a member of the Communist Party.

Evelyn O. Darin, Alfred Oyler, and Arminio Sardoch had been identified as members of the Communist Party in an open hearing on January 3, 1955, before the subcommittee chaired by Senator Joseph McCarthy. These individuals had been subpenaed to testify on that date but Alfred Oyler and Evelyn Darin did not appear due to reason of illness, and Arminio Sardoch appeared too late to be heard by the subcommittee, which had adjourned. At the time that they were subpenaed all three were employees of the Westinghouse Electric Corp. in East Pittsburgh, Pa., a company having defense contracts. Their employment was terminated shortly after their identification as Communist Party members.

Arminio Sardoch, Evelyn Darin, and Alfred Oyler were afforded an opportunity to appear before this subcommittee to testify pursuant to rule 13 of the Rules of Procedure of this subcommittee, but none availed themselves of the opportunity.

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[6] "Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a subcommittee member or counsel, tends to defame him or otherwise adversely affect his reputation, may (a) request to appear personally before the subcommittee to testify in his own behalf, or in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the subcommittee for its consideration and action."

PLAINTIFF'S EXHIBIT 63 (Continued)

Textile Procurement in the Military Services

In conformity with the obligation of the subcommittee to determine whether there has been any waste, extravagance, or inefficiency or other improprieties in the operations of the executive departments, the subcommittee examines into aspects of the procurement field from time to time.

Complaints made to the subcommittee as early as 1953 indicated that favoritism was being exercised in the procurement of military textile and apparel equipment.

Evidence was presented showing that unscrupulous contractors had bribed and connived with both civilian and armed services officers attached to the Armed Services Textile and Apparel Procurement Agency known as ASTAPA, on certain aspects of procurement. This agency has been set up by the Defense Department to coordinate the procurement of textile and apparel items for the Army, Navy, and Air Force. During the 13 months of its existence, from October 1, 1952, to October 31, 1953, ASTAPA committed for procurement the sum of $537 million.

During the hearings it was developed that although contracts were awarded on their face to the lowest responsible bidder, contractors such as the Spencer Manufacturing Co., of Puerto Rico, and Mid City Uniform Co., of Chicago, Ill., both controlled by Mr. Harry Lev, were subsequently granted deviations from the original terms of the contracts which enabled them to reap large hidden profits at the expense of the Government. These contract deviations seldom became public knowledge and usually were known only to the contractor involved, the contract officers, and inspectors for the Government.

Evidence submitted to the subcommittee clearly demonstrated that the inspection service personnel had likewise been bribed and corrupted to permit thousands of defective hats to be delivered to the Navy.

As a result of the investigation the Department of Defense took disciplinary action against both contractors and Defense Department personnel who were guilty of improprieties. Fourteen persons and firms, mostly those associated with Mr. Harry Lev, were placed on the consolidated list of "Debarred, ineligible, and suspended bidders." Mr. Sol Schlesinger, on the plea of self-incrimination, invoked the fifth constitutional amendment. He refused to testify on material matters and was likewise placed on the list of debarred bidders.

The misconduct of Marvin Rubin and Harry Lev in their relations with Government agencies was particularly noted and criticized. Their testimony was marked by evasion and was obviously false and untruthful.

A number of persons involved in improper actions, who were investigated, are no longer employees of the Department of Defense and were separated from Government service prior to the hearings.

The subcommittee singled out for criticism the following procurement officials for their lack of candor and evasive testimony as well as for their inefficiency and misconduct in carrying out their official duties: Maj. Eric Farnell and George Earnshaw, David Oshiver, Joseph Porreco, Louis I. Alperstein, William Ienni, Mella Hort, and Henry B. Vining, career civilian employees.

Four career civilian officials, David Pollack, Julius Goldman, Ferdinand Tartaglia, and Jerome Schlesinger, were dismissed from

PLAINTIFF'S EXHIBIT 63 (Continued)

Government service or resigned after charges were preferred against them. One Air Force officer, Capt. Raymond Wool, tendered his resignation for the good of the service and he was separated from the Air Force under conditions other than honorable.

In other instances the Defense Department is withholding disciplinary action at the request of the Department of Justice, which has the cases under active investigation and does not desire any action be taken which might preclude or jeopardize possible action by the Justice Department.

At the request of the subcommittee the Defense Department made a new study of the claims against the contractors in the light of the evidence developed at the hearings. This study revealed that a total of $511,475.63 is due to the Government from these contractors on these claims, and it is the committee's understanding that these claims are now being processed for collection.

It is hoped that the investigation will act as a deterrent in the future. The exposures of these instances of bribery, collusion, corruption, and inefficiency can point the way to corrective measures.

It is certain that the matter of deviations will receive more active scrutiny in the future and the interests of the Government will be more closely guarded.

As a direct result of the hearings the Quartermaster Corps instituted a new practice of letting contracts on patented items which were included as specifications in the manufacture of armed services hats and caps. A contract was let for the manufacture of 750,000 metal stays and grommets at an estimated savings in cost of 46½ cents per hat. Such items will be given to the contractors as "Government furnished property" with a resultant savings to the Government of 46½ cents per hat over previous costs. Thus on future procurement contract of only 1 million hats the savings to the Government will amount to $465,000 by this simple rectification of procurement practice which resulted from the subcommittee hearings.

It is the committee's intention to continue to investigate into procurement practices from time to time to seek methods of avoiding waste and extravagance and to bring to light any fraud or corruption in the field of procurement.

HAROLD E. TALBOTT

Mr. Harold E. Talbott, having been designated by the President to be Secretary of the Air Force, appeared before the Armed Services Committee of the United States Senate on January 16, January 29, and again on February 2, 1953, and there was interrogated regarding his holdings in companies which might have direct or indirect dealings with defense establishments.[1] Regarding such companies as Electric Auto-Lite, Baldwin-Lima-Hamilton Corp., and Chrysler Corp., the following colloquy took place between the chairman of the committee and Mr. Talbott:

Chairman SALTONSTALL. Have you severed your relations with all of those companies?

Mr. TALBOTT. Yes, sir. I had one other interest. I have an engineering company in which I have dropped back as a special partner.

[1] Hearing on nominations before the Committee on Armed Services, U. S. Senate, January 16, pp. 90–103; January 29, pp. 49–53; February 2, pp. 7–50.

PLAINTIFF'S EXHIBIT 63 (Continued)

Chairman SALTONSTALL. Are you still a special partner?
Mr. TALBOTT. I am still a special partner in that company.
Chairman SALTONSTALL. What is the name of that company?
Mr. TALBOTT. Mulligan & Co.
Chairman SALTONSTALL. What business does it do?
Mr. TALBOTT. Industrial engineering, and they confine their work entirely to clerical companies, controls, clerical controls, or the study of the numbers of clerks needed in an industry, and in their clerical work. And it is very successful in its analysis of how many clerks are needed in the operation of a business.

Now, in setting myself up as a special partner, our lawyers drew up an agreement with the other partner—there are only two partners, Mulligan and myself—that no work was to be done while I am in Washington that had to do with defense work essentially. They may be doing some work for Ford, for example, but that is not essentially a war contract. But where it is possible, they will stay away from any of the aircraft companies.

Chairman SALTONSTALL. In other words, you have divested yourself of every business interest, or will have divested yourself from every business interest, when you are sworn in as Secretary of the Air?
Mr. TALBOTT. Yes, sir.[8]

Mr. Talbott was sworn in as Secretary of the Air Force on February 4, 1953. In early March 1955, it was reported to the staff of this subcommittee that Mr. Harold Talbott's interest in the Paul B. Mulligan & Co. had undergone no change since he became Secretary and this company was doing business with other companies that had contracts with the defense services, including the Air Force. A preliminary investigation was ordered by the chairman of the subcommittee. Upon its completion, on July 18, 1955, the chairman arranged a conference between the Secretary of the Air Force and the subcommittee members.

At Mr. Talbott's request, he appeared on the afternoon of July 21, in open session and thereafter, public hearings were held on July 25, 26, and 27 to hear Mr. Talbott 2 more times, as well as 4 other witnesses. In addition, a recorded telephone conversation between the chairman and Senator Mundt with representatives of Douglas Aircraft was placed in the record. All the hearings, by unanimous consent, were open to the public.

The record established that the contracts entered into by the Paul B. Mulligan & Co. during the period of 1953–55 were the following:[9]

Company	*Date of contract*
American Greetings Corp	Nov. 16, 1953.
Anemostat Corp	June 1, 1953.
Avco Corp.[1]	July 6, 1953.
Blue Bell	November 1953.
Baldwin-Lima-Hamilton Corp.[1]	June 1, 1953.
Cleveland Electric Illuminating Co.[1]	Mar. 1, 1954.
Cone Mills[1]	July 14, 1954.
Electric Auto-Lite[1]	Aug. 18, 1954.
Greyhound Corp	Nov. 30, 1953.
Mutual Benefit Life Insurance Co	Mar. 1, 1955.
Olin Mathieson (former Olin Industries)[1]	Sept. 15, 1953.
Oscar Mayer[1]	Nov. 29, 1954.
Owens-Illinois Glass Co., Inc	June 29, 1953.
R. H. Macy	July 6, 1953.
Richfield Oil[1]	June 15, 1954.
Union Oil Co.[1]	Apr. 4, 1955.
Willys Motors, Inc.[1]	June 28, 1954.
Worthington Corp.[1]	Feb. 24, 1954.

[1] Indicates companies having business with one or more of the defense services.

[8] Ibid., January 16, p. 92.
[9] Hearings, Harold E. Talbott, Secretary of the Air Force, p. 109.

PLAINTIFF'S EXHIBIT 63 (Continued)

The earnings of the Paul B. Mulligan & Co., as placed in the record by Paul B. Mulligan, were as follows: [10]

Statement of operations—Paul B. Mulligan & Co., Feb. 1, 1947, to Jan. 31, 1955

Year ending Jan. 31	Gross income	Overhead less Paul B. Mulligan & Co., salary	Net profit for partners	Paul B. Mulligan & Co., income (including salary)	Harold E. Talbott income
1948	$76,000	$49,209	$2,833	$28,375	$1,417
1949	94,825	60,152	9,674	29,837	4,837
1950	169,200	92,678	51,522	50,761	25,761
1951	269,000	159,998	84,004	67,002	42,002
1952	321,800	195,972	100,528	75,264	50,264
1953	285,800	176,173	84,327	67,163	42,163
1954	405,300	249,542	130,758	90,379	65,379
1955	411,850	253,542	133,307	91,653	66,653

Mr. Talbott in his appearance before the subcommittee on July 21 denied any illegal or improper action on his part while serving as Secretary of the Air Force and as a partner in the Paul B. Mulligan & Co.[11] He asked that there be placed in the record a letter written to Mr. Mulligan on January 8, 1953, which follows: [12]

DEAR MR. MULLIGAN: As you know, I have been designated Secretary of the Air Force in the new administration, and if confirmed by the Senate, will be in charge of procurement of aircraft and other materials, equipment, and services for that branch of the Armed Forces of the United States. I have resigned all directorships and other positions of responsibility with all corporations with which I have been connected.

You and I are general partners in Paul B. Mulligan & Co., which in its business of management engineering, could logically acquire clients and receive compensation from business entities doing business with the Department. Because of possible criticism of such an eventuality and the fact that I will be fully occupied by my new duties, I wish to record now my view of how such accounts should be handled. I do not believe our partnership should be discontinued, but believe some changes should be made in my participation in it.

I suggest that during my tenure of office, I be considered in the nature of a special or limited partner in the firm of Paul B. Mulligan & Co., with full and complete authority in you alone to continue the business and to make all decisions without consultations or advice from me.

Should the firm secure clients whose business, in your opinion, is predominately in the area of the procurement responsibilities of the Secretary of the Air Force, they shall be handled as special accounts and be segregated completely from the other business of the firm. Should you be in doubt with respect to the classification of any account, I authorize you to consult with my attorney Mr. Murray Smith, who will advise you concerning same. With respect to such special accounts, I shall receive no income or compensation whatever. Will you please sign and return the enclosed copy of this letter as evidence of your agreement to the foregoing?

With best wishes for your continued success, I am,

Sincerely,

HAROLD E. TALBOTT.

Mr. Talbott stated that this special partnership arrangement was never used by him and that he had received his full share of all the profits of the company while he was Secretary of the Air Force.[13] He agreed that the Paul B. Mulligan & Co. did business with companies that had contracts with the military services, but stated that these

[10] Ibid., p. 198.
[11] Ibid., p. 8.
[12] Ibid., p. 195.
[13] Ibid., pp. 5, 198.

PLAINTIFF'S EXHIBIT 63 (Continued)

companies were not "predominantly" or "essentially" in the defense fields.[14] However, Mr. Talbott later acknowledged that approximately 50 percent of the business of Avco Manufacturing Co., a client of Paul B. Mulligan & Co., was with the defense services.[15] He said he found nothing improper in writing to prospective clients, even though these prospective clients were defense contractors.[16] Some correspondence and memoranda were obtained from Mr. Talbott and from the files of the Paul B. Mulligan & Co. and were placed in the record. The letters of most concern to the subcommittee are the following:

FEBRUARY 12, 1953.

Mr. JOHN W. HANES,[17]
Olin Industries, Inc., New York, N. Y.

DEAR JOHN: I am asking Mr. Paul Mulligan, of Mulligan & Co., to drop in to see you.

I will appreciate it very much if you can arrange to give him 30 minutes. You can be really helpful to me, I feel sure.

Sincerely,

HAROLD E. TALBOTT.

FEBRUARY 11, 1955.

Mr. FRANK MISCH,
Detroit, Mich.[18]

DEAR MR. MISCH: [19] After I chatted with "Tex" Colbert, I telephoned to our offices in New York. Mr. John B. Van Haelen[20] and Mr. Robert W. Moore,[21] will be at your office at 10 o'clock Monday morning, February 14.

I appreciate very much your seeing these men, and feel sure that you will be very much interested in the story as they present it.

Things move along so fast these days that I don't realize how many of you younger men have come up to take the important positions in the corporation.

I had hoped that I would be out to visit with "Tex" and some of your officials before this time, but it seems that it has just been impossible. I do hope I'll be able to pay a visit soon, and will look forward to seeing you at that time.

Sincerely yours,

HAROLD E. TALBOTT.

Examples of memoranda taken from the files of the Paul B. Mulligan & Co. are the following:

SUBJECTS TO BE DISCUSSED WITH HAROLD E. TALBOTT, APRIL 7, 1953

(1) February financial situation
(2) Olin Industries
(3) Baldwin-Lima-Hamilton
(4) Western Union
(5) Gillette Safety
(6) In the East:
- American Can (Mazur)
- American Smelting (Mazur)
- Hanover Bank (Schwartz)
- General Cable (Mazur)
- Grand Union (Van Haelen)
- Kennecott Copper (Schwartz)
- Phillip Morris (Schwartz)
- Schenley Industries (Schwartz)
- Sperry Corp. (Schwartz)
- Underwood Corp. (Schwartz)

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[14] Ibid., p. 17.
[15] Ibid., p. 18.
[16] Ibid., pp. 6–8, 19.
[17] Ibid., p. 206, exhibit 28a.
[18] Ibid., p. 198, exhibit 7.
[19] Chairman of Finance Committee, Olin Mathieson Chemical Co.
[20] Vice president, organization—Chrysler Corp.
[21] Employee of Paul B. Mulligan & Co.

PLAINTIFF'S EXHIBIT 63 (Continued)

(7) Stewart-Warner
(8) Western situation:
Ford Motor
American Greeting Card
Perfection Stove
Cleveland Electric Illuminating
(9) Request advise on:
Atchison, Topeka & Santa Fe
Greyhound
(10) Advise concerning rental of space
(11) Quinn-Cincinnati Milling Machine Co.
J. & W. Selegman
Minneapolis Honeywell (Schwartz through Quinn)
Maytag (Schwartz)
(12) Have Harold E. Talbott call Schwartz at 4 p. m.[22]

JANUARY 27, 1955.

From: Billy Kern.
To: Walter Cook.

Just a note to let you know that Mr. Talbott has talked directly to Reece Taylor on the telephone. Hope this does the trick.

Best regards.

BILLIE KERN.[23]

Paul B. Mulligan & Co. signed a contract with the Union Oil Co. on April 4, 1955. It should be noted that Mr. Mulligan testified that Billie Kern is his secretary; Walter Cook, an employee of Mulligan & Co., on the west coast, and that Reece Taylor is president of the Union Oil Co.[24]

Secretary Talbott testified in his first appearance on July 21, 1955, that when he learned that the RCA company had raised a question as to the propriety of its making a contract with the Paul B. Mulligan & Co. because of Talbott being a partner and RCA having contracts with the military services, his immediate reaction was: "My goodness, if there is any such suspicion forget it. We won't do the contract or have anything to do with it."[25] He stated he immediately told Paul B. Mulligan to drop the idea of making a contract with RCA for he would "not think of having any business with them."[26] He said he did not press RCA to make the contract, and initially stated he did not tell anyone in the Air Force that he was dissatisfied with RCA for not entering into the contract. However, later he agreed that he might have mentioned the difficulty the Mulligan Co. had been having with RCA to the General Counsel for the Air Force, Mr. John A. Johnson, but he stated he did not ask him to take any action.[27] He further testified that he could not remember having a conversation with Mr. Sam Ewing, an attorney for RCA at Camden, N. J., regarding the contract and in which conversation he expressed disapproval of RCA's position.[28]

However, on July 22, Mr. Talbott wrote to the chairman:

This morning I talked with Mr. John Johnson, General Counsel for the Department of the Air Force.

He refreshed my memory regarding the conversation with a Mr. Ewing of RCA, Camden. Mr. Kennedy's statement yesterday that I had talked with Mr. Ewing is correct and my memory was at fault.[29]

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[22] Hearings, Harold E. Talbott, Secretary of the Air Force, p. 200, exhibit 10.
[23] Ibid., p. 51.
[24] Ibid., p. 51.
[25] Ibid., p. 28.
[26] Ibid., p. 29.
[27] Ibid., p. 29.
[28] Ibid., p. 30.
[29] Available in the files of the subcommittee.

PLAINTIFF'S EXHIBIT 63 (Continued)

On July 25, 1955, Mr. Sam Ewing was called to testify. He stated that a question as to the legality and propriety of RCA entering into a contract with Paul B. Mulligan & Co. was raised when RCA officials learned that Mr. Harold Talbott was a partner of Paul B. Mulligan in this efficiency firm.[30] This came about after Mr. Talbott telephoned Mr. David Sarnoff, chairman of the board of RCA, in November 1953 and told him that his partner, Paul B. Mulligan, was meeting some obstacles in making a contract with the RCA company and that Mr. Sarnoff might look into the matter to see if it could be expedited.

The legal division of RCA questioned whether it would be legal and proper for RCA to contract with the Mulligan Co.[31] Mr. Ewing testified that Mr. Mulligan was informed of this opinion and that RCA would not make a contract with Mulligan Co. unless it received a letter or memorandum from the Attorney General stating that it was legal and proper for RCA to do so.[32] Mr. Mulligan told him that he should have a conference with Mr. Murray Smith, a lawyer designated by Mr. Talbott to handle these affairs.[33] Mr. Ewing held such a conference, and Mr. Smith told him he would be in touch with him at a later date.

On a number of different occasions in December, Mr. Mulligan called Mr. Ewing and another official of RCA to tell them that Mr. Talbott was disturbed that this question had been raised by RCA.[34]

On January 4, 1955, Mr. Ewing received a telephone call from Mr. Mulligan, who asked him how the matter stood. Mr. Ewing explained that he still had not heard from Mr. Murray Smith.[35]

Mr. KENNEDY. And then what occurred after that?

Mr. EWING. Well, later in the day, I received a telephone call from Washington from a man who identified himself as the General Counsel of the Air Force, Mr. John A. Johnson.

Mr. KENNEDY. Go ahead.

Mr. EWING. All right.

He said that he had understood that RCA was troubled about this proposed contract with Mulligan & Co. and that he was prepared to write a letter of opinion and give it to RCA stating that he saw no legal reason why the contract could not be entered into.

Mr. KENNEDY. He said that he would provide a legal opinion for RCA regarding the legality of entering into this contract?

Mr. EWING. Yes; he said he would give a legal opinion to RCA.

Mr. KENNEDY. What was your answer to that?

Mr. EWING. Well, we discussed or we got into somewhat of a legal discussion, as I was not clear that he understood all of the facts, and that he had really looked into the matter.

Mr. KENNEDY. How long did that discussion last?

Mr. EWING. It is hard to tell at this late date. I would guess a couple of minutes, certainly.

Mr. KENNEDY. Then did some other event take place?

Mr. EWING. Yes.

Mr. KENNEDY. What happened then?

Mr. EWING. A new voice came on the wire, and the individual speaking identified himself as Secretary Talbott. He was talking quite rapidly and, among other things, he told me or listed over the phone the names of a number of other companies that he said were doing work for the Air Force that had contracts with the Mulligan Co.

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[30] Hearings, Harold E. Talbott, Secretary of the Air Force, p. 80
[31] Ibid., pp. 80–81.
[32] Ibid., pp. 80–90.
[33] Ibid., p. 82.
[34] Ibid., p. 83.
[35] Ibid., p. 84.

PLAINTIFF'S EXHIBIT 63 (Continued)

Mr. KENNEDY. Do you remember the names of some of those companies?

Mr. EWING. I recall a few of them. He must have mentioned 12 or 15, AVCO was one, Baldwin, I think Continental Can, General Analine, General Foods, and those are the only ones that I happen to remember.

The CHAIRMAN. I understand that he mentioned those as companies that had contracts with the Defense Department?

Mr. EWING. Yes, sir.

The CHAIRMAN. Pointing out, as I understand it, that others with contracts with the Air Force were becoming clients or had been clients of Mulligan & Co.; is that correct?

Mr. EWING. Yes, sir.

Mr. KENNEDY. Did he say that these companies had contracts with the Air Force or with the Defense Department?

Mr. EWING. To the best of my recollection, he said the Air Force, but it might have been the Defense Department.

Mr. KENNEDY. Now, the conversation went on and what did he say?

Mr. EWING. Well, when I had the opportunity to say anything, I said that I was very much surprised by this telephone call, that I had reviewed the matter with the attorney I thought was representing him in his Mulligan & Co. interest, Mr. Murray Smith, and that I was waiting to hear back from him; and that I had never heard from him.

Mr. KENNEDY. What did he say to that?

Mr. EWING. Well, he said something to this effect, that "Oh, Murray Smith is just a lawyer out in Dayton; he doesn't know what is going on around here" and "Mr. Johnson is representing me in this matter."

The CHAIRMAN. You mean he told you that Mr. Johnson, General Counsel for the Air Force, was representing him in this matter?

Mr. EWING. Yes, sir.

Mr. KENNEDY. Is that what you want to convey to this committee?

Mr. EWING. Well, it is what unfortunately I am compelled to convey to this committee, sir.

Mr. KENNEDY. What else did he say in this conversation regarding the position of RCA?

Mr. EWING. Well, I don't recall that.

Mr. KENNEDY. Do you recall some of the words that he used, Mr. Ewing?

Mr. EWING. I honestly don't.

Mr. KENNEDY. Do you remember if I refresh your recollection of our first conversation, you stated that he said, "Why is RCA acting so high and mighty?" Do you remember him using those words?

Mr. EWING. You are absolutely correct. He said that if all of these other companies could take contracts with Mulligan & Co., why was RCA acting so high and mighty?[36]

Mr. Ewing testified that Mr. Talbott seemed "annoyed" during the conversation;[37] "his tone of voice was forceful and it seemed that he wanted some action."[38]

Mr. Ewing reported this conversation to his superiors in New York and that same day he received instructions from them to have no further dealings with Mr. Johnson or any other person in Washington on this contract.[39] Mr. Ewing telephoned Mr. Johnson to this effect and told him that all his future dealings should be with the New York office of RCA.[40]

Mr. John A. Johnson, General Counsel of the Air Force, was called to testify. He stated that on January 4, 1955, Mr. Talbott had called him into his office and told him of the objection that RCA had raised to making a contract with the Paul B. Mulligan & Co.[41] After reviewing the testimony of Mr. Talbott before the Senate Armed Services Committee, he called Mr. Sam Ewing at the RCA Camden,

[36] Ibid., pp. 84–85.
[37] Ibid., p. 86.
[38] Ibid., p. 89.
[39] Ibid., pp. 86–87.
[40] Ibid., p. 87.
[41] Ibid., p. 93.

PLAINTIFF'S EXHIBIT 63 (Continued)

N. J., office.[42] There was discussion regarding the legal question involved, and he told Mr. Ewing he was prepared to give the Secretary of the Air Force a letter to the effect that no statute would be violated if RCA made this contract with the Paul B. Mulligan & Co.[42]

Mr. Johnson said that Mr. Talbott then carried on a conversation with Mr. Ewing in which Mr. Talbott—

> indicated he was very upset by the implication that the legality and propriety of his retention of a partnership interest in Paul B. Mulligan & Co. was being questioned.[42]

Mr. Ewing telephoned him later in the day to tell him the matter had been referred to the RCA New York office and was out of his hands.[42]

On January 5 a lawyer from the RCA Washington office visited Mr. Johnson and indicated that RCA would be satisfied only with an opinion from the Attorney General or the General Counsel of the Air Force concurred in by the Attorney General.[42] Mr. Johnson testified that he informed Secretary Talbott and the Secretary asked him to discuss the matter with the Attorney General. Mr. Johnson called on the Attorney General on January 6 and showed him a memorandum which he had prepared for the Secretary, stating that no statute would be violated in an RCA and Paul B. Mulligan & Co. contract.[42] The Attorney General, he said, expressed no disagreement with this legal conclusion but stated he would like to take this matter under consideration.[42]

On January 8, 1955, Mr. Johnson told Secretary Talbott of the conference with the Attorney General, and within a few days Secretary Talbott told him there would be no contract between the Paul B. Mulligan & Co. and RCA and to take no further action in the matter.[43]

Mr. Johnson stated that he was meeting the duties of his office in giving the Secretary a legal opinion as to whether there would be a violation of the conflict-of-interest statutes. He said it was not his duty nor did he deem it proper for him to comment on the propriety of Mr. Talbott's actions in this matter.[44] He pointed out, however, that Mr. Talbott had put the Armed Services Committee on notice that he was going to retain an interest in the Paul B. Mulligan & Co. as a special partner.

Mr. Talbott reappeared before the subcommittee on July 26, 1955, and testified he had been in error in his previous testimony. He said Mr. Ewing and Mr. Johnson were correct regarding his actions in the Mulligan-RCA dispute.[45] Specifically, he stated that he was mistaken when he testified that he did not ask Mr. Johnson to take any action in this contract, because, in addition to calling Mr. Ewing, at his request, Mr. Johnson had gone to see the Attorney General to get a ruling from him that no statute would be violated if RCA made this contract with the Mulligan Co.[45] He believed the Attorney General subsequently informed him that he could not, within the duties of his office, give him such an opinion.[46]

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[42] Ibid., p. 94.
[43] Ibid., pp. 94–95.
[44] Ibid., pp. 97–103.
[45] Ibid., p. 160.
[46] Ibid., p. 161.

PLAINTIFF'S EXHIBIT 63 (Continued)

Mr. Talbott reappeared before the subcommittee on the last day of the hearings and said:

> In retrospect, however, I now see that I was mistaken in permitting myself to make phone calls or write letters about the Mulligan Co. The few minutes I have given to the Mulligan Co. since I took office have been a trivial part of my time. I really doubt that I have given Mulligan Co., and my other private affairs, 2½ days out of the 2½ years I have been in Washington. My interest in the company has never influenced me in the slightest degree in the execution of my duties as Secretary of the Air Force, and I hope and believe that that is the opinion of you all.[47]

Mr. Talbott then testified that on July 22 he had written his partner, Mr. Paul B. Mulligan, that he was divesting himself of all interest in their partnership and that Mr. Mulligan had informed him that the partnership would be dissolved as of July 31, 1955.[48]

Mr. Talbott resigned as Secretary of the Air Force on August 1, 1955, and his resignation was accepted by the President of the United States on the same day.

The subcommittee finds that Mr. Talbott made a mistake and acted indiscreetly in his position as Secretary of the Air Force. It agrees his resignation was quite proper under the circumstances.

Inefficiencies in Department of Agriculture Grain Bin Program

As part of the farm price-support program, the Department of Agriculture, through the Commodity Credit Corporation, has purchased millions of dollars of surplus grain from American farmers. The handling of this grain presented a considerable problem, since its storage requirements have far exceeded commercial storage facilities.

In order to store surplus grain, the Department has actively engaged in the purchase of grain storage bins since 1949. As of August 20, 1954, it had on hand 192,878 grain bins with a capacity of 843,890,529 bushels. The cost to the American taxpayer for these facilities totals $177,217,000.

The Department of Agriculture, since 1949, has arranged with the Naval Inspection Service of the Navy Department, on a reimbursible basis, to establish proper and adequate inspection procedure at the manufacturer's plant to assure that these materials meet specifications. The Department of Agriculture has been responsible for the furnishing of adequate specifications and plans to the Naval Inspection Service.

The Department is responsible for establishing a proper inspection at the erection site to see that the bins are erected according to Government specifications.

This subcommittee held public hearings for 4 days during July and August of 1955 and examined closely allegations of inefficiency and mismanagement in the purchase and construction of grain storage facilities.[49]

CONFUSION AND LACK OF COORDINATION

The metal grain bin program of 1954 was handled in an atmosphere of confusion, gross carelessness, and a lack of coordination which was compounded by the division of responsibility between the Department of Agriculture, Naval Inspection Service, and State agricultural offices to whom the bins were delivered.

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[47] Ibid., p. 179.
[48] Ibid., p. 180.
[49] Hearings, Grain Bins, Department of Agriculture, July 22, August 2, 3, and 4, 1955.

PLAINTIFF'S EXHIBIT 63 (Continued)

FAILURE TO PROFIT BY ERRORS

During 1949 and 1950 the Department of Agriculture purchased a large number of bins which were found to be defective. The inability to fix responsibility between the fabricator and the erector or, in other instances to establish the liability of the manufacturer, was due to lack of proper inspection procedures. As a result only $31,000 out of $893,864.89 of claims for defective bins erected in 1949–50 has thus far been collected.

In 1954 a large number of metal grain bins were purchased under the grain storage bin program and many have been found to be defective. Errors in manufacturing by Black, Sivalls & Bryson of Kansas City, Mo., coupled often with poor workmanship on the part of the erectors, has caused many of the side walls of the bins to buckle and squash.

The fact that some of these bins are neither weather nor grain tight, the fact that moisture and vermin might enter the structures, and the necessity of moving the grain to new bins to prevent its deterioration and contamination have made the 1954 grain-bin program unnecessarily costly to the Government.

The Department of Agriculture did not adopt sufficient corrective measures following the mistakes made in 1949 and 1950. It was aware that the losses in the erection of defective bins were caused by the lack of proper specifications, failure to provide for proper inspection of materials at the manufacturing plant, and failure to provide for proper inspection at the site of erection. Despite this knowledge it failed to remedy the situation by providing adequate specifications and inspection in 1953–54. From the number of defective grain bins in 1949 and 1950, the Naval Inspection Service knew or should have known of the deficiencies in its Inspection Service.

The Department of Agriculture and the Naval Inspection Service were both guilty of gross inefficiency and demonstrated poor business management and lack of initiative and judgment.

WOODEN BINS

Wooden bins purchased by the Department of Agriculture in 1954 from the Reeves Co., of Los Angeles, Calif., and other companies, were found to be defective. The Department of Agriculture is severely criticized for its negligence and inefficiency in failing to act and process claims when defective wooden bins were reported. The Navy Department likewise is severely criticized for its negligence and inefficiency in wrongfully certifying that defective lumber met Government specifications. The negligence and inefficiency of these Departments has resulted in a considerable loss to the Government.

ERRORS

There were 14 major errors committed by the Department of Agriculture and the Naval Inspection Service in the 1954 grain-bin program. They are listed below:

PLAINTIFF'S EXHIBIT 63 (Continued)

I. The Department of Agriculture

(a) Metal bins

(1) The Department of Agriculture failed to furnish the Navy inspectors with adequate drawings and specifications in order for them to carry out a proper inspection of grain bins.

(2) No provision was adopted by the Department of Agriculture for adequate inspection at the erection site to check whether the materials received were in accordance with Government specifications or if the erection was properly performed.

(3) A pilot model bin or sample structure was not requested by the Department in 1954 to check whether the component parts of the bin met Government specifications and the bin could be readily assembled.

(4) The Department of Agriculture instructions relating to the method and procedure for the packaging for shipment of the various parts of the grain bin lacked clarity and detail.

(b) Wooden bins

(5) The Department of Agriculture was dilatory in acting upon complaints that the lumber used in bins was defective and inferior.

(6) The Department of Agriculture failed to properly press for price adjustments from the contractors for failure to use proper materials.

II. The Naval Inspection Service

(a) Metal bins

(1) The Naval Inspection Service failed to properly check and ascertain whether the Department of Agriculture's drawings and specifications submitted for the inspection of steel bins were adequate for a proper inspection.

(2) The inspectors were not instructed by their superior as to the type of inspection they were to carry out.

(3) The Naval Inspection Service used drawings after their deficiencies had been drawn to the attention of the Inspector-Director of the Office of Navy Material by the staff of the subcommittee.

(4) Naval inspectors on several occasions improperly used the manufacturer's shop drawings to conduct their inspection of the bins. These drawings had not been approved by the Department of Agriculture and were in error.

(5) The inspectors improperly approved 900 perfection-type bins which were not in accordance with the Department of Agriculture specifications for bolt spacing.

(6) The inspectors certified various component parts of the bin to be in accordance with Government specifications, even though they failed to inspect them. These included—

(a) Foundation pads.

(b) Formation of the top corrugation of the foundation ring.

(c) Distance between boltholes on the side-wall sheets of the bins.

(7) In the inspection of the pilot model bin the following errors were made:

(a) The inspector was not present when the bin was erected to determine if it could be readily assembled.

PLAINTIFF'S EXHIBIT 63 (Continued)

(*b*) The inspection was carried out without drawings and specifications.

(*c*) The material used to construct the pilot model was not checked by the Navy inspector. It was erected from 1953 stock, not from the material sold to the Government in 1954.

(*d*) The naval inspector was not aware that it was his responsibility to determine whether the bin met Government specifications until sometime after he completed his inspection.

(*b*) *Wooden bins*

(8) Navy inspectors in 1954 improperly and inaccurately certified lumber as meeting Government specifications.

CORRECTIVE MEASURES

The subcommittee has been informed that on December 22, 1955, B. S. & B. entered into an agreement with the Department of Agriculture to extend its warranty for 4 years to August 31, 1959. This warranty calls for repair of defective bins to assure that they will be graintight, weathertight and structurally sound. As evidence of its good faith, the company has posted a $1 million surety bond. It should be noted from the inception of its investigation the subcommittee found the officials of B. S. & B. most cooperative.

The subcommittee also has been informed that there have been 21 corrective measures taken by the Department of Agriculture and the Department of the Navy as a result of the investigation and hearings of the subcommittee on this matter.

(*a*) *The Department of Agriculture*

(1) An inspection at the erection site has been instituted for the 1955 grain-bin program.

(2) The manufacturer is required to submit to the Department of Agriculture shop drawings for the side-wall sheet of the bin, foundation-ring sheet, and the footing pad.

(3) The Department of Agriculture will provide the Navy inspectors with adequate and approved fabrication drawings for the side-wall sheet, the footing pad, and the foundation-ring sheet.

(4) The Department of Agriculture will provide drawings and specifications for completely corrugated foundation rings in lieu of those previously used.

(5) The manufacturer is required to erect a complete sample structure from current production.

(6) The erection of a sample structure will be required at the rate of 1 structure out of every 500 bins, or more frequently if required by the inspector.

(7) Manufacturers will be required to assemble any part or parts of the structure from elements under current production, selected at random by the inspector as frequently as he may determine.

(8) The manufacturer is required to package structures for shipment in such manner as to obtain lowest carload lot rates. New requirements for loading, blocking, and bracing of structures and parts have been adopted to fully protect and maintain original shape and design.

(9) In the packaging of the bin components for shipment, no package shall exceed a total weight of all the six sheets comprising ring No. 2 of the bin.

PLAINTIFF'S EXHIBIT 63 (Continued)

(10) The inspector designated by the Department of Agriculture will either reject structures or parts thereof or certify that they are in accordance with Government specifications.

(11) The manufacturer is required to certify that each structure erected meets all erection specifications and was constructed fully in accordance with Government specifications.

(12) The inspection or acceptance of structures by the Department of Agriculture shall in no way affect warranties or other contract requirements.

(13) The manufacturer's warranty that the bin is in accordance with Government specifications is to be for 2 years instead of 1 year.

(14) The manufacturer is required to supervise and inspect all phases of the work in connection with the construction in erection of his structure.

(15) If the structure does not meet Government specifications, the manufacturer shall specify in detail where it fails to conform.

(16) The punching of holes in all sheets will vary with each tier sheet. This will preclude placing the wrong wall sheet in any of the six tiers which comprise the bin.

(17) Both wooden bins and the manufacturers' own designed bin are excluded from the Department of Agriculture grain bin procurement program. Unless an emergency arises only the Department's standard cylindrical bin is to be purchased.

(*b*) *The Naval Inspection Service*

(1) Individuals responsible for inspecting grain storage bins are being trained much more intensively.

(2) Upon receipt of request to perform inspection services, the Navy inspection office will carefully review the request to assure that all essential detailed information, specifications, and drawings are provided. It will undertake to establish proper inspection procedures and assign a trained and capable staff of inspectors to perform requested services.

(3) A closer liaison has been instituted at the Washington level between the Department of Agriculture and the Naval Inspection Service.

(4) A closer liaison between the Naval Inspection Service in Washington and its field office will be maintained in the future. Upon a receipt of a request from the Department of Agriculture, the Naval inspection office in the field will immediately notify the Naval inspection office in Washington, so that the latter office will be able to maintain administrative control over the inspection services being furnished.

HUGH W. CROSS

In early September 1955 it was reported to the subcommittee that Mr. Hugh W. Cross, chairman of the Interstate Commerce Commission, interceded for personal reasons with officials of certain railroads in order to influence the awarding of a contract in favor of a company owned by Mr. J. L. Keeshin, of Chicago, Ill. This contract was awarded by these railroads to Railroad Transfer Service, Inc., the Keeshin firm, for the intracity transportation of passengers and baggage between stations in Chicago, Ill.[80]

[80] Hearings, Hugh W. Cross, Chairman of the Interstate Commerce Commission, November 15, 1955, p. 11.

PLAINTIFF'S EXHIBIT 63 (Continued)

Mr. Hugh Cross is an attorney and has been a member of the Interstate Commerce Commission since April 11, 1949. From July 1, 1955, until the date of his resignation, November 23, 1955, he was Chairman of this Commission.

In the past the Interstate Commerce Commission has ruled that the transportation of passengers and baggage between stations in Chicago, Ill., is not properly the subject of Interstate Commerce Commission regulation. This matter of jurisdiction is still in controversy.[51] However, there is no question that the railroads upon whom the decision in this contract negotiation rested are subject to the Interstate Commerce Commission regulations and are, therefore, susceptible to influence by its members.

Chicago is one of the largest railroad centers in the United States. However, while Washington, New York, Boston, and other major cities have 1 or 2 railroad stations, Chicago has 8 separate terminals at different points in the city. Each of these stations provides a terminal for from 1 to 6 railroads. A large number of the passengers traveling through the city of Chicago are, therefore, required to transfer from one terminal to another by means other than railroad. The contract calling for transportation of these passengers and baggage from one station to another amounts to a gross of $1½ million each year.

For 102 years the transfer of passengers with their baggage between stations in Chicago has been provided by the Parmelee organization of Chicago. Except for isolated instances, this service was provided by the Parmelee organization without a formal contract.[52]

The 21 railroads involved have entrusted the making of these arrangements to the Western Passenger Association, an organization made up of railroads. Because of rising costs and allegations of declining service, the question of whether to continue the arrangement with Parmelee came under consideration by this group.

A subcommittee of this Western Passenger Association was appointed and met in March of 1954 to consider available alternatives. This subcommittee was made up of representatives of the following railroads:[53]

Baltimore & Ohio
Chicago & North Western
Illinois Central
Pennsylvania Railroad
New York Central
Atchison, Topeka & Santa Fe

Negotiations with a number of firms in the transportation business were carried on over the next year or so, culminating with the vote by the subcommittee on June 3, 1955, which unanimously favored transferring this business to Mr. John L. Keeshin. This action was ratified by the full group on June 13, 1955, and the Parmelee organization was notified that its services would terminate October 1, 1955, while the Keeshin firm was notified that its services would be contracted for beginning the same date.[54]

The allegation is that prior to the vote by the subcommittee Mr. Hugh Cross contacted certain railroad officials and attempted to influence their vote in favor of Mr. Keeshin because of an arrangement whereby, if Mr. Keeshin received the contract, Mr. Cross would be employed by him.

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[51] Ibid., p. 6.
[52] Ibid., p. 4.
[53] Ibid., p. 17.
[54] Ibid., p. 82.

PLAINTIFF'S EXHIBIT 63 (Continued)

A preliminary staff inquiry developed certain information regarding this transaction and included a staff interview with both Mr. Cross and Mr. Keeshin. In view of the fact that the information secured from independent sources tended to support the initial allegation, but was at variance with that secured both from Mr. Cross and Mr. Keeshin and also because the information provided by Mr. Cross was in certain respects different from that provided by Mr. Keeshin, executive hearings were held by the subcommittee on November 15, 1955, at which these men, among others, were witnesses.

Paul E. Feucht testimony

Mr. Paul E. Feucht, president of the Chicago & North Western Railroad, testified before the subcommittee that on May 13, 1955, Mr. Hugh Cross telephoned him regarding this contract.

Mr. Feucht's testimony follows in part:

Mr. FEUCHT. He called me and told me that he was interested in getting this or seeing that Keeshin got this contract, and he quoted some figures which I wrote down in a little penciled note on a pad and I told him that as far as I was concerned I would be very happy to look at it and pass the information on to my people who were handling it, but that each contract had to stand on its own feet, and if Keeshin's bid was the best bid we could get and they could perform the service and they were financially responsible, I would be very glad to take a look at it. But from an economic standpoint, each bid had to stand on its own feet.

The CHAIRMAN. Mr. Feucht, did he amplify or go into any explanation of the nature of his interest in seeing that Keeshin got the contract?

Mr. FEUCHT. No, and I was quite puzzled as to why I got the call.

The CHAIRMAN. You were puzzled?

Mr. FEUCHT. Yes.

The CHAIRMAN. You mean that you had not anticipated such a call?

Mr. FEUCHT. No, I had not.

The CHAIRMAN. You also were concerned about the propriety of such a call?

Mr. FEUCHT. I didn't give it a second thought, at that time. I thought about it afterward a little bit.

The CHAIRMAN. What did you think about it afterward?

Mr. FEUCHT. I just thought it was kind of funny that someone like that would call me about this contract.

At another point in this testimony the following was recorded:

The CHAIRMAN. And the information he gave you was somewhat in the nature of an argument in favor of Keeshin, was it not?

Mr. FEUCHT. That is correct.[55]

There was presented to the subcommittee in evidence a memorandum prepared by Mr. Feucht immediately following his conversation with Mr. Cross. It is headed "Memorandum of My Conversation With Hugh Cross, Commissioner, Interstate Commerce Commission, at 4:15 p. m.[56] Friday, May 13, 1955":

Hugh Cross stated that he was very much interested in seeing that J. L. Keeshin got the new contract with the railroads here in Chicago to handle baggage and people between the various stations. He understands the contract expires July 1 and there are three bids for the new contract—Willett, Parmalee, and Keeshin.

The bid Keeshin has proposed is $1.20 which is 2 cents lower than what we are now paying. In other words, we are paying $1.22. For every 5 cents an hour wage increase they will only increase 1 cent an hour but they will not go higher in 3 years than 3 cents even though the wage increase might be higher than 3 cents an hour. Parmalee came down and met the $1.20 but there are

[55] Ibid., pp. 8–9.

[56] Ibid., p. 59. The telephone records subpenaed by the subcommittee indicate that there was a telephone call from Mr. Cross in Washington, D. C., to Mr. Feucht in Chicago, at 5:10 p. m., Friday, May 13, 1955. In view of the difference of time, the 5:10 in Washington would be 4:10 in Chicago, coinciding with the time indicated by Mr. Feucht in his memorandum. The records reveal that this telephone conversation lasted for 11 minutes.

PLAINTIFF'S EXHIBIT 63 (Continued)

some jokers in their proposal in that their contract states that for every 1 percent decrease in receipts there will be a 1 cent raise in tickets, which clause is not in Keeshin's bid.

In addition, Keeshin offers eight passenger station wagons, heated in the wintertime and air conditioned in the summer, they would put any suggested name on them the railroads decide upon, they would handle baggage every hour on the hour between the various stations, and they would have representation here in Chicago as against the absentee representation by Parmalee.

He also stated that Keeshin's proposal was backed up by the First National Bank and they would get new equipment every 3 or 5 years (I am not positive but I believe he said every 3 years).[57]

Mr. Feucht said that prior to receiving the call from Mr. Cross, he did not know the details of the competing proposals. Upon checking later he learned that these features as quoted by Mr. Cross were substantially accurate.

Wayne A. Johnston testimony

Mr. Wayne A. Johnston, president of the Illinois Central Railroad, testified before the subcommittee that, sometime prior to the final decision on the contract in question, he was talking with Mr. Hugh Cross in Mr. Cross' office in Washington. Mr. Johnston said that he had heard that Mr. Cross was planning to go to work for the new company to be formed by Mr. Keeshin to handle the transfer business and therefore on this occasion he asked Mr. Cross whether the rumor he had heard was accurate; whereupon Mr. Cross said that if Mr. Keeshin was successful in getting the contract he, Mr. Cross, was going to go to work for him.[58]

Mr. Johnston was uncertain what position Mr. Cross would occupy, but he was under the impression that Mr. Cross would be president of the new company set up to handle the transfer business. Mr. Johnston also testified that at no time did Mr. Cross ask him to give favorable consideration to the Keeshin Co.[59]

Howard E. Simpson testimony

Mr. Howard E. Simpson, president of the Baltimore & Ohio Railroad, submitted affidavits in lieu of his personal appearance. In these affidavits he said that during the spring of 1955 Mr. Cross called him from Washington asking for an appointment and thereafter came to Baltimore and conversed with him in his office. Among the subjects discussed was the contract for the transfer of passengers and baggage between railroad stations in Chicago. Mr. Cross asked Mr. Simpson the status of the negotiations, to which Mr. Simpson replied that he did not know all the details but would find out and inform Mr. Cross, which he did several days later. Mr. Simpson further said that Mr. Cross inquired about this matter a couple of times later. Mr. Simpson said that Mr. Cross made no attempt to influence his decision regarding which company should get the contract.[60]

The records of the Chesapeake & Potomac Telephone Co., subpenaed by the subcommittee, indicate four long-distance telephone calls, person to person, from Mr. Cross to Mr. Simpson on April 18, May 3, May 20, and June 8, 1955.[61] Two of these were made during the working hours from the Interstate Commerce Commission telephone but charged to Mr. Cross' home telephone number.

[57] Ibid., p. 10.
[58] Ibid., p. 20.
[59] Ibid., p. 19.
[60] Ibid., p. 22.
[61] Ibid., p. 25.

PLAINTIFF'S EXHIBIT 63 (Continued)

Fred G. Gurley testimony

Mr. Fred G. Gurley, president of the Atchison, Topeka & Santa Fe Railroad also submitted affidavits in lieu of of his personal appearance and in these affidavits he said that he had heard "rumors and statements" to the effect Cross would become associated with the Keeshin organization if it should succeed in securing the transfer contract. However, he swore that he had no communication of any kind either with Mr. Cross or Mr. Keeshin regarding the truth of these reports, or with Mr. Cross regarding the merits of the Keeshin proposal.[62]

In connection with this investigation the telephone toll tickets of Mr. Cross' home telephone number, along with that of Mr. Keeshin's home and business telephone, were subpenaed from the telephone company having custody of them. An examination of these calls from the period March 15 through September 1955 shows a total of 32 person-to-person telephone calls between Mr. Cross and Mr. John L. Keeshin. Of these, 18 were from Mr. Cross to Mr. Keeshin and 14 were from Mr. Keeshin to Mr. Cross. All but four of the Keeshin-to-Cross calls were made to Mr. Cross' home.[63]

It will be noted that these conversations took place at various times during the day but more often in the afterwork hours. In addition, it was noted that a number of these calls lasted for substantial lengths of time. A breakdown follows:

Number of calls up to 6 p. m.	8
Number of calls from 6 p. m. to 9 p. m.	8
Number of calls from 9 p. m. to midnight	14
Number of calls on which the time is not indicated	2
Total	32

It will be further noted that the length of these conversations is broken down as follows:

Up to 15 minutes	13
15 to 30 minutes	17
Over 30 minutes	2
Total	32

J. L. Keeshin testimony

When Mr. Keeshin testified before the subcommittee, he stated that in connection with another firm he had tentatively planned to buy more than a year ago, he had told Mr. Cross, who is a personal friend of many years duration, that if the transaction could be consummated he would like to have Cross come to head up the company.[64] He said this purchase was not concluded and therefore the condition for the offer was not fulfilled. However, he said:

> I told him then that if at any time he wanted to go back into business and wanted to become associated with me I would be very happy to have him associated with me.[65]

Mr. Keeshin told the subcommittee that there was no specific offer in connection with the contract for the intracity transfer service in Chicago.[66]

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[62] Ibid., p. 23.
[63] Ibid., p. 25.
[64] Ibid., p. 33.
[65] Ibid., p. 43.
[66] Ibid., p. 42.

PLAINTIFF'S EXHIBIT 63 (Continued)

Mr. Keeshin, in his sworn testimony, informed the subcommittee that he had discussed the contract for the Chicago transfer business with Cross and added:

> I wanted his views as to the fact that I was going into a different phase of this business of mine, and, like anything else, being he is my friend, if the occasion arises, that he could pass a good word for me, naturally I would hope he would do it.[67]

In another instance, Mr. Keeshin said with reference to Mr. Cross:

> * * * and he said if ever the occasion arose, he would pass a kind word for me.[68]

In another instance Mr. Keeshin said:

> When I got the contract, I called him and thanked him for what help he did give me, if he did give me any * * *[69]

Mr. Keeshin stated that he is a close friend of Mr. Cross, that they talked frequently by telephone, and that this Chicago contract was often a subject of discussion.[70]

Hugh W. Cross testimony

Mr. Hugh Cross informed the subcommittee in his sworn testimony that in his opinion and in retrospect he had been "indiscreet" in discussing this contract with officials of the interested railroads.[71] He informed the subcommittee that he has been personally friendly with Mr. Keeshin for a number of years. He said that probably in compliance with Mr. Keeshin's request that he determine the status of the matter he made an appointment with Mr. Simpson, president of the Baltimore & Ohio Railroad, and discussed the matter with Mr. Simpson, inquiring about the current status. On one or more occasions later he also inquired from Mr. Simpson, and on each occasion Mr. Simpson informed him concerning the situation at that time regarding the Chicago contract.[72]

Mr. Cross said that he is a close personal friend of Mr. Johnston, president of the Illinois Central Railroad and has been such for a number of years. He said that at some informal gathering which both attended, Mr. Johnston facetiously asked him if he was going to go to work for Keeshin. He said that since he considered Mr. Johnston's remark to be in jest, he did not make a flat denial. He said, however, that he did not tell Mr. Johnston that he would go to work for Mr. Keeshin if Mr. Keeshin got the Chicago contract.[73]

With reference to the telephone call to Mr. Feucht, Mr. Cross said that, as a member of the Interstate Commerce Commmission, he was interested in the welfare of all railroads. He said the situation of the Chicago & North Western Railroad was of particular interest to him for various reasons including the financial plight of the railroad and the isolated geographic location of the railroad station in Chicago requiring more transfers within the city. He said he called Mr. Feucht and gave him some details of Keeshin's bid in order to insure that Mr. Feucht and his subordinates would give adequate attention and study to this matter and arrive at the solution which was to the

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[67] Ibid., p. 40.
[68] Ibid., p. 41.
[69] Ibid., p. 46.
[70] Ibid., pp. 37, 40, and 41.
[71] Ibid., pp. 59, 65.
[72] Ibid., pp. 60, 75.
[73] Ibid., p. 79.

PLAINTIFF'S EXHIBIT 63 (Continued)

best interests of the Chicago & North Western Railroad.[74] In this connection the following testimony was recorded:

Senator ERVIN. You were afraid that without the suggestion from you that the president of the Chicago & North Western Railroad might not take the trouble to find out which 1 of the 2 or more bids was the best for the railroad. And therefore you called him to suggest that he decide the matter on the merits and take the one for the best economic advantage of his railroad. Is that correct?
Mr. CROSS. I assume that that is substantially correct, Senator."

Mr. Cross was questioned by subcommittee members concerning his apparent knowledge of the contract negotiations as demonstrated in his conversation with Mr. Feucht. In response to such inquiries Mr. Cross, although he later qualified these answers, stated:

Mr. CROSS. I did not have any knowledge as to the specific terms of the bids."
Mr. CROSS. I did not know what the other bid or bids were * * *."
The CHAIRMAN. Did you know at that time anything about the Parmelee interest's bid, as to what rate it had proposed in its proposal?
Mr. CROSS. No; I did not.
The CHAIRMAN. Did you know that it had revised its proposal downward?
Mr. CROSS. No; I did not.
The CHAIRMAN. You did not discuss that with Mr. Feucht?
Mr. CROSS. No."

Mr. Cross told the subcommittee that at no time did he have any thought of asserting his influence in favor of Mr. Keeshin and that his possible employment by Mr. Keeshin had not been discussed in connection with this contract.[75]

With reference to Mr. Keeshin's contact with Mr. Cross, Mr. Cross said the following:

The CHAIRMAN. In those conversations did he at any time ask your assistance, or help in any way, in connection with securing this contract?
Mr. CROSS. I think that he inferentially at least, did.
The CHAIRMAN. In what manner, Mr. Cross?
Mr. CROSS. I think that he didn't ask me to go out and talk to people, if you mean that.
The CHAIRMAN. What did he ask you to do?
Mr. CROSS. I think he said to me if I could put in a good word for him, he would appreciate it.
The CHAIRMAN. Did you agree to put a good word in for him?
Mr. CROSS. I don't think that I agreed to that."

Following the testimony hereinbefore described, which took place on November 15, 1955, Mr. Cross resigned his Government office to take effect immediately upon acceptance on November 23, 1955. For this reason it was the decision of the subcommittee that no useful purpose would be served by a further inquiry into this matter.

The subcommittee feels that Mr. Cross made a mistake and acted indiscreetly in his position as Chairman of the Interstate Commerce Commission. It agrees his resignation was quite proper under the circumstances.

Since Senators Karl E. Mundt and George H. Bender did not participate in the Hugh W. Cross matter, they neither concur nor endorse this section of the report.

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[74] Ibid., p. 59.
[75] Ibid., p. 78.
[76] Ibid., p. 63.
[77] Ibid., p. 63.
[78] Ibid., p. 64.
[79] Ibid., p. 68.
[80] Ibid., p. 66.

PLAINTIFF'S EXHIBIT 63 (Continued)

Tariff on Imported Watches

The subcommittee received an allegation that the Treasury Department Bureau of Customs has failed to collect a duty imposed in the Tariff Act of 1940 on jeweled watches containing 17 or fewer jewels. The specific duty is applicable to adjustments performed on these watches prior to their shipment into the United States. It is alleged that prior to the passage of the Tariff Act of 1930, which imposed the duty on adjustments, most foreign watches were shipped into the United States marked "adjusted." Subsequent to the passage of this act most of them have been shipped into this country marked "unadjusted." The allegation is that these watches actually are adjusted but are marked "unadjusted" in order to void the tariff.

It is further alleged that this enforcement failure has three major results:

1. The loss of revenue to the United States Government of at least $238 million since the act was passed.
2. The placing of the United States watch-producing industry at a severe competitive disadvantage as compared to its counterpart abroad, particularly in Switzerland.
3. The loss of skills developed in the production of watches which are applicable and necessary to defense industries.

The subcommittee held hearings in executive session on this subject on June 29 and 30, 1955, and January 10, 1956. Among other witnesses, Under Secretary of the Treasury H. Chapman Rose testified on the last two of these dates. Following his first appearance, Secretary Rose caused an investigating team to conduct inquiries in Switzerland and in the United States concerning this problem. He stated that upon receipt of its report and the completion of a study he is having made here in this country, he will report the Treasury's findings and recommendations on the matter to the subcommittee.

The subcommittee will thereafter issue its report on this subject, based on its investigation.

Staff Study on Redefection

During the year the staff made a study of the redefection campaign in Europe, which is a concentrated effort of Communist countries to induce people who have fled communism to return to their homelands. It became apparent during 1955 that the problem had become a matter of major significance.

Some 300,000 refugees are the target for various redefection media utilized by Communist countries. This number is the residue of some 10 million non-German refugees and displaced persons in Western Europe since the close of World War II, coupled with well over 600,000 people who have since fled from Russia or one of her satellite countries to the West. Health, age, lack of certain skills required by immigration and sometimes criminal and even pro-Communist records have made resettlement for the majority of the 300,000 somewhat hopeless. This problem is a continuing one, as refugees every day flee to the West for asylum.

Throughout the years the United States has participated either solely or with other countries in various programs aimed at finding a solution to the problems of refugees. Its active interest is indicated

PLAINTIFF'S EXHIBIT 63 (Continued)

by the fact it has resettled in the United States some 500,000 persons, which is almost as many as have been resettled in all the other countries of the free world put together. At the present time the United States participates in four groups: Intergovernmental Committee for European Migration which deals primarily with migrants (including refugees) out of overpopulated Europe, the organization under the Refugee Relief Act which deals only with the issuance of visas, the Office of United Nations High Commission for Refugees, which seeks to aid those not qualified for resettlement, and the escapee program which lends assistance to the refugee, both from a welfare standpoint and resettlement. This latter program, which was established March 22, 1952, renders aid to persons who escaped from Russia after January 1, 1945, and to refugees from a satellite nation after January 1, 1948. Because of these restrictions and the fact that for policy reasons refugees from Yugoslavia do not qualify, only 30,000 persons are eligible for escape aid. Through this assistance this group maintains a standard of living somewhat higher than the other refugees. The administrative aspects of this program are handled by the employees of the International Cooperation Administration, but the actual implementation from an operational standpoint is by nongovernmental workers, namely, voluntary agencies.

These agencies, who for many years have endeavored to assist the refugees, have continued to work under this escapee program. They operate on the basis of contracts which, within the limits of the appropriation, permits them to actively assist the refugee in skills, education, orientation, and resettlement problems.

The refugee is housed either in a camp or regular housing, but this does not mean that he enjoys the comforts of life. In Germany, for example, the sum of 35 cents a day is allotted for his livelihood. Since he is not allowed to work, even if able, pending a check by the Government of asylum which takes some several months, he often lives where the slumlike conditions have bred unhappiness and discontent bordering on desperation.

The files of this subcommittee have documentation showing that newspapers, radios, circulars, chain letters, and personal letters to refugees from Iron Curtain countries urging their return have increased within the past year to the point of it becoming a concentrated plan on the part of Communist nations. Some of these satellite countries have declared an amnesty to refugees, but this is only one of the facets for the success of the redefection program. Length of residence in camps, the low subsistence of living, inability to work, hopelessness for the future, and fear are all factors that must be considered in the redefection campaign.

The number of persons who have actually redefected is unknown. The only known figure is that of the escapee program, which shows some 2,700 persons have disappeared. The redefection campaign has had an unsettling effect, and the free world is in danger of losing a propaganda advantage which it has thus far maintained.

East-West Trade

The subcommittee has continued during 1955 its close watch on the trade between our allies and the Communist world. The most recent statistics on the dollar value of free-world trade with Com-

PLAINTIFF'S EXHIBIT 63 (Continued)

munist China made available by the Commerce Department disclose for the first 6 months of 1955 the value of this trade to Red China to be 394.1 (millions of dollars). For the same period of 1954 the figure was 310.6 (millions of dollars). This is an increase of $83.5 million in this 6-month period.

In addition, the latest trade figures furnished the subcommittee by the Defense Department disclose that the number of Western-flag vessels moving in and out of Chinese Communist ports continues to increase at an alarming rate.

These figures show that for the first 8 months of 1955 vessels flying the flags of non-Communist countries and totaling 7,136,202 gross tons, made 1,187 trips in and out of Red Chinese ports. For the same period in 1954 these vessels had a total gross tonnage of 5,650,091 and made 935 trips in and out of Red Chinese ports. This is an increase in 1955 of approximately 1,400,000 gross tons and 252 trips. On the basis of these statistics our allies shipping to China in 1955 will surpass the former peak year of 1954.

A closer look at these statistics graphically portrays the tremendous contribution British-flag vessels are making in the carriage of goods to the Red China mainland. Approximately 53 percent of the vessels involved in this trade during this 8-month period were under British registry and flying the British flag.

An analysis of the voyages of these vessels shows a substantial number carried cargoes from European Communist countries to Communist Chinese ports. This is a practice that was prevalent during the Korean war, and it is obvious that our allies are continuing to render this major economic assistance to the Communist world.

The subcommittee once again wishes to draw attention to the valuable contribution made by Communist-controlled shipping companies operating out of the British Crown colony of Hong Kong to Red China's economy. A majority of the vessels operated by these Communist companies fly the British flag and, therefore, are accorded the protection of the British Fleet.

One of these companies, the Far East Enterprising Co., Ltd., of Hong Kong, was singled out in 1953 for its activities during the Korean war in chartering Western-flag vessels to carry goods to the China mainland. Nothing was done by the British at that time. The subcommittee on March 13, 1955, made public the fact that the Finnish tanker *Aruba*, which was carrying jet fuel to the Red China mainland, had been chartered for this trip by the Far East Enterprising Co. and that this company, although operated out of Hong Kong, was actually owned and controlled by the Chinese Communists.[51]

The subcommittee also made public the fact that the Swedish-flag vessel *Sunnanbris* carried strategic materials to the Chinese mainland, even though the ship's manifest listed its cargo as "lawful merchandise."

The subcommittee feels that our allies, particularly the British, are making major contributions to the Chinese war economy. As pointed out in another part of this report, at least 11 Americans remain imprisoned in China while our allies' trade with China increases. The

[51] The *Aruba* never did arrive in Red China, as it turned back about March 22, 1955.

PLAINTIFF'S EXHIBIT 63 (Continued)

role of our allies on this matter during the Korean war and during this unhappy postwar period is a matter of deep distress to the members of the subcommittee.

Purchase of Locomotives by the Spanish Government

By a telegram dated March 8, 1955, the Baldwin-Lima-Hamilton Corp., Eddystone, Pa., complained to this subcommittee that an award for the purchase of diesel locomotives by the Spanish Government had been made to the American Locomotive Co., despite the fact that Baldwin-Lima-Hamilton was a lower bidder by about one-quarter of a million dollars, and that these locomotives were being purchased by the Spanish Government with funds allotted by the Foreign Operations Administration.

The Spanish Government in 1954 sent out invitations to bid for 14 diesel locomotives for the use of the Spanish National Railroad System, the locomotives to be purchased with funds made available by Foreign Operations Administration. After an examination of the bids the Spanish Government made the award to Alco (American Locomotive Co.) for $3,035,970 or $216,855 per locomotive. Alco had provided a working model of its locomotive which the Spanish had tested for several months and found to be very satisfactory. The Baldwin-Lima-Hamilton Corp.'s bid was $199,800 per locomotive, the total bid being $238,770 less than Alco's.

The investigation reflects that the Spanish Government was legally within its rights in selecting the Alco bid. Despite the difference in price the Spanish Government found that the Alco locomotive was best suited to Spain's needs, was cheaper to operate and maintain, and the earlier delivery date promised by Alco made for economies which more than offset the difference in price. Furthermore, no additional cost to the United States Government is involved. Since Spain is allotted a fixed amount of money for the year, the amount spent for locomotives only decreases the amount available for other expenditures.

American Prisoners in Iron Curtain Countries

The subcommittee has continued its study of American personnel, both civilian and military, who are being held prisoners in Communist-controlled countries. Extensive staff interviews have been conducted with prisoners who had been released by Communist China. In its appraisal of the situation the subcommittee held two executive sessions with representatives of the Departments of State, Defense, Navy, and the Air Force. At the first, on April 18, 1955, there was discussion regarding the efforts being made by the executive agencies and by the Secretary General of the U. N. Any further action by the subcommittee was deferred pending the outcome of negotiations being conducted by the Secretary General with Communist China.

On June 29, 1955, another subcommittee conference was held with representatives of the State Department and military services at which the release from China of the four airmen and several civilians since the April 18 session was discussed. In view of the conferences being held in Geneva by the American and Chinese consuls and the meeting of the Big Four powers at the summit in Geneva, it was felt

PLAINTIFF'S EXHIBIT 63 (Continued)

that open hearings by the subcommittee would not be propritious and apparently would not assist or contribute in the release of the American prisoners. Since that date 11 military and 29 civilians have been released from Communist China.

The subcommittee continues its active interest in this matter and with the rest of the world awaits China's release of at least 13 additional Americans as well as the other foreign nationals from imprisonment.

Matters Referred to the Department of Justice

During the course of various public hearings several matters developed which were referred to the Justice Department for possible prosecution.

In the case of Irving Peress the testimony of Brig. Gen. Ralph W. Zwicker, former commanding officer at Camp Kilmer, N. J., was in conflict with that of C. George Anastos and Mary Morrill, former subcommittee staff members. On April 12, 1954, all testimony and documents in connection therewith were forwarded to the Department of Justice for study as to whether there appeared to be a violation of the perjury statute. On November 23, 1955, the Department advised that a thorough investigation had been conducted and the results were being studied in the Criminal Division. The letter stated the subcommittee would be informed of the determination made.

On May 26, 1955, a transcript of the public hearings on the investigation involving the FOA grain-storage project in Pakistan was referred to the Department of Justice. An opinion was requested for possible prosecution of Robert H. Pinner, an FOA consulting engineer, and various individuals of the Agricultural Construction Co. On October 10, 1955, Justice advised that since there was a possible violation of perjury statutes by Robert H. Pinner, the matter was being forwarded to the United States attorney for the District of Columbia for his consideration as to criminal prosecution.

All of the hearings, executive and public, in the textile procurement in the military services, which includes testimony of Harry Lev, Marvin Rubin, Mrs. Mella Hort, David Pollack, Julius Goldman, Joseph G. Porreca, Capt. Raymond Wool, Jerome Schlesinger, and Ferdinand Tartaglia, were furnished to the Department of Justice for various violations of law. The Department is studying such testimony with a view to violations of the bribery and perjury statutes.

The testimony of one witness who appeared in executive session in connection with Communist infiltration in defense plants was referred to the Department of Justice on May 2, 1955, for an opinion as to violation of the perjury statute.

Diantha Hoag, a former employee of the Westinghouse Electric Corp., was cited for contempt by the Senate on February 4, 1955. She was thereafter indicted by a grand jury in the District of Columbia on June 21, 1955, and her trial is pending. In her testimony before this subcommittee she had initially denied she was, had been, or would engage in espionage and sabotage. Later, in response to questions relating to possible espionage, she invoked the first and fifth amendments.

PLAINTIFF'S EXHIBIT 63 (Continued)

CURRENT WORK

A number of investigations are being made by the staff at the present time. These, of course, do not include the numerous preliminary inquiries.

COMMUNIST INFILTRATION OF SCHOOLS OBTAINING BENEFITS UNDER VETERANS' EDUCATIONAL AND REHABILITATION PROGRAM

The subcommittee has been in receipt of allegations that certain schools owned or operated by members of the Communist Party have been approved to train veterans of World War II and the Korean war under various laws providing educational and rehabilitation benefits. It has been reported further that veterans have been and are presently attending such schools, their tuition being paid by the Veterans' Administration.

The staff is presently engaged in a detailed inquiry to determine whether schools actually owned or controlled by Communists have in fact been so approved, whether the Veterans' Administration is expending funds for the tuition of veterans attending these schools, and if so, the reasons therefor.

EAST-WEST TRADE

In 1954 extensive changes were made in the export controls on the sale and delivery of strategic materials from the free nations of the world to the Soviet-dominated areas.

The changes in United States security export controls were coordinated and ran concurrently with a similar review of international East-West export controls. This downgrading of strategic items has been highly classified and cloaked with secrecy, particularly as to the aspects relating to international controls. However, it has been reported that controls over certain highly strategic items have been unduly relaxed and that the officials authorizing decontrol have disregarded technical and intelligence reports strongly opposing such decontrol.

The subcommittee also received reports of illicit traffic in strategic materials, particularly copper, and of constant efforts being made by Soviet purchasing agencies to obtain such products. The subcommittee is continuing its study of these problems in preparation for possible hearings this coming year.

GSA PURCHASES OF MEXICAN MANGANESE

Information was furnished the subcommittee that an American-owned mine in Chihuahua, Mexico, was under contract to furnish manganese to the Emergency Procurement Service of General Services Administration and was operating on money loaned by the Export-Import Bank. Through an error there was an overpayment to the mining company, and when the mine was unable to refund the overpayment, EPS then canceled the contract.

An investigation is being made to determine if both the Export-Import Bank and the EPS acted in the best interests of the United States Government and whether there was any wrongdoing on the part of the mining company involved.

PLAINTIFF'S EXHIBIT 63 (Continued)

ARMED FORCES PROCUREMENT

The investigation of procurement of textile and apparel equipment for the armed services has led to information regarding improper practices in other types of procurement. The subcommittee is presently conducting inquiry into irregularities in this field.

The members of the Committee on Government Operations, except those who are members of the Senate Permanent Subcommittee on Investigations, did not sit in on the hearings and executive sessions on which the above report was prepared. Under these circumstances, they have taken no part in the preparation and submission of the report, except to authorize its filing as a report made by the subcommittee.

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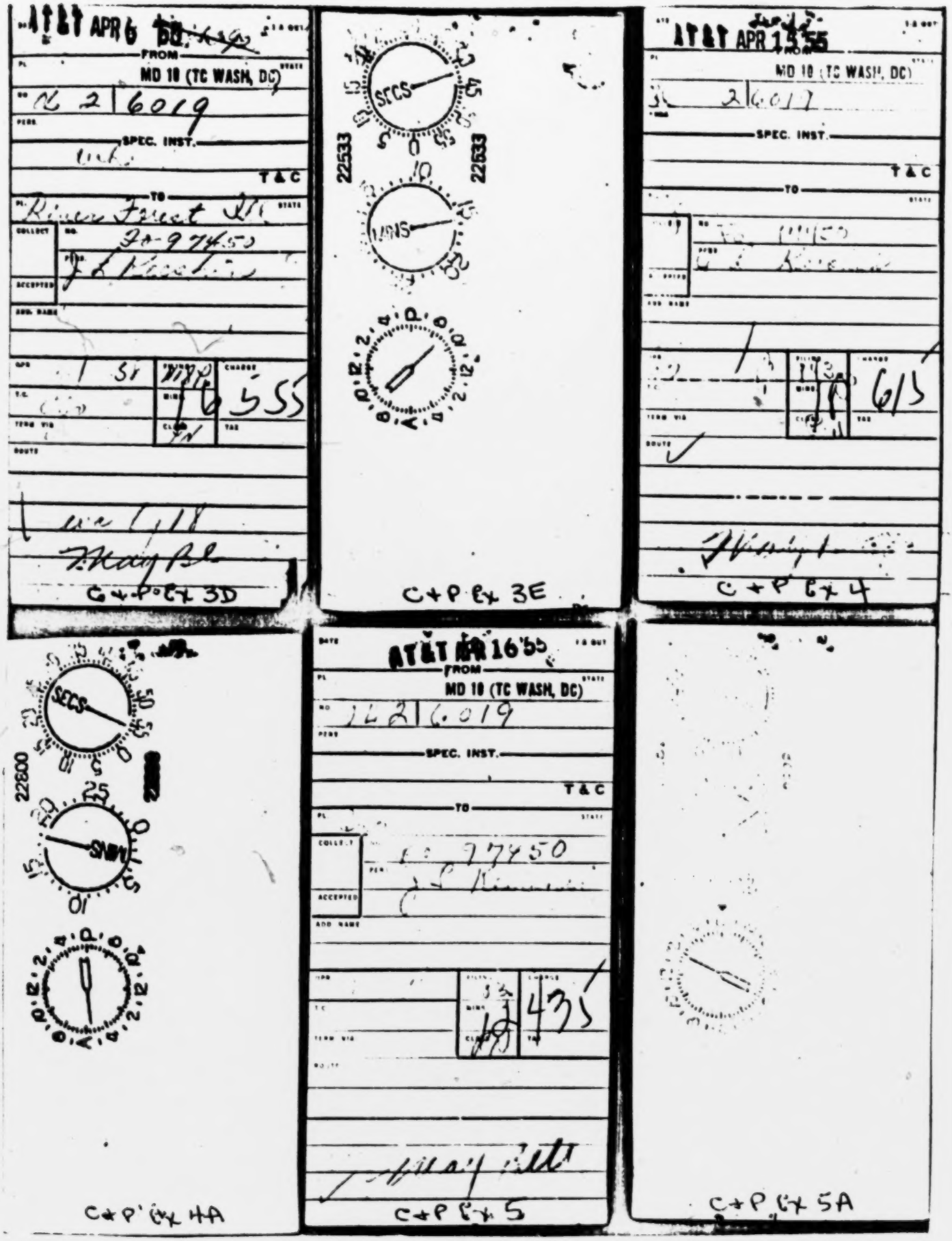

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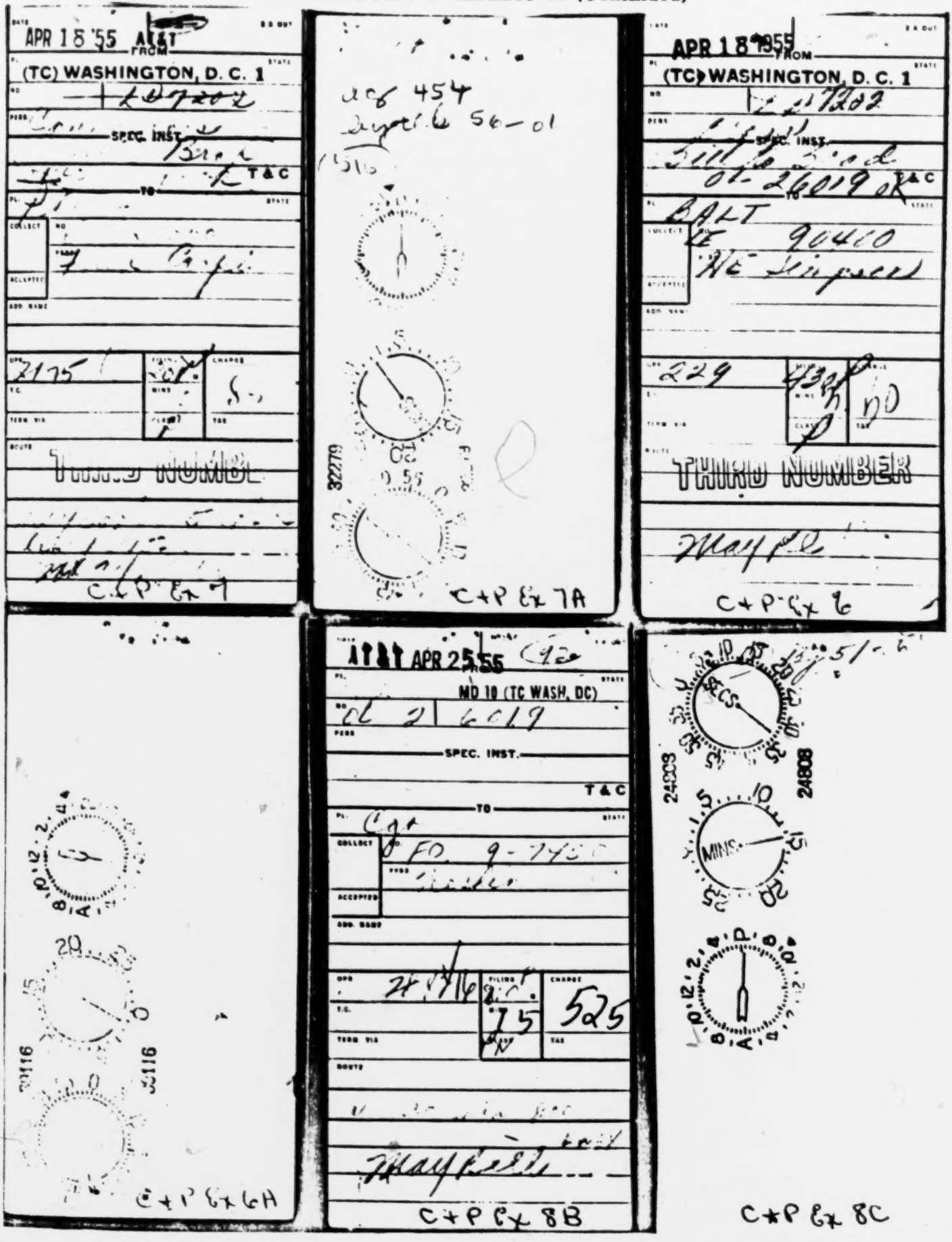

PLAINTIFF'S EXHIBIT 64 (Continued)

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FROM

(TC) WASHINGTON, D. C. 1

SPEC. INST.

T&C

TO

COLLECT

ACCEPTED

ADD NAME

OPR

T.C.

TERM VIA

FILING

MINS 4

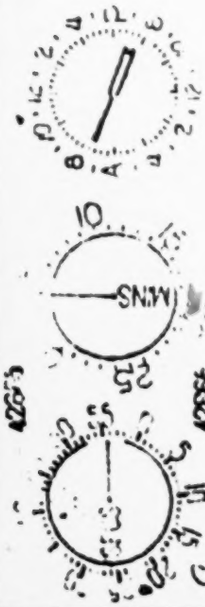
CHARGE 100

TAX

ROUTE

THIRD NUMBER

C+P Ex 8D



C+P Ex 8E

MAY 12 '55 AT&T

FROM

(TC) WASHINGTON, D. C. 1

SPEC. INST.

Bill to Brad OL 26019

T&C

TO

COLLECT

ACCEPTED

ADD NAME

OPR

T.C.

TERM VIA

FILING

MINS

CHARGE

TAX

ROUTE

THIRD NUMBER

C+P Ex 13

MAY 12 '55 AT&T. (15)

FROM

(TC) WASHINGTON, D. C. 1

Vd 7202

Comm. Cross

SPEC. INST.

Bill to Brady OL 26019

T&C

TO

Phla

COLLECT

ACCEPTED

ADD NAME

OPR

T.C.

TERM VIA

FILING

MINS 3

CHARGE 85

TAX

ROUTE

THIRD NUMBER

C+P Ex 14

C+P Ex 13A

C+P Ex 14A

PLAINTIFF'S EXHIBIT 64 (Continued)

Y 13 1955
FROM
MD 10 (TC WASH, DC)
L 2 6019
SPEC. INST.
T & C
TO
BALT
LE 9-0400
H. E. Simpson
56
426 P
6
55
June
C+P Ex 16

24808

C+P Ex 16A

AT&T MAY 13 '55
FROM
MD 10 (TC WASH, DC)
OL 2 6019
SPEC. INST.
WH
T & C
TO
Cgo
DE 22121
Feucht
OPR 1654
510 P
11
515
June
C+P Ex 17

SECS
MINS
23281

C+P Ex 17A

AT&T MAY 15 '55
FROM
MD 10 (TC WASH, DC)
OL 2 6019
SPEC. INST.
T & C
TO
Cgo
Fa 97450
OPR 57
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C+P Ex 18

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MINS
23281

C+P Ex 18

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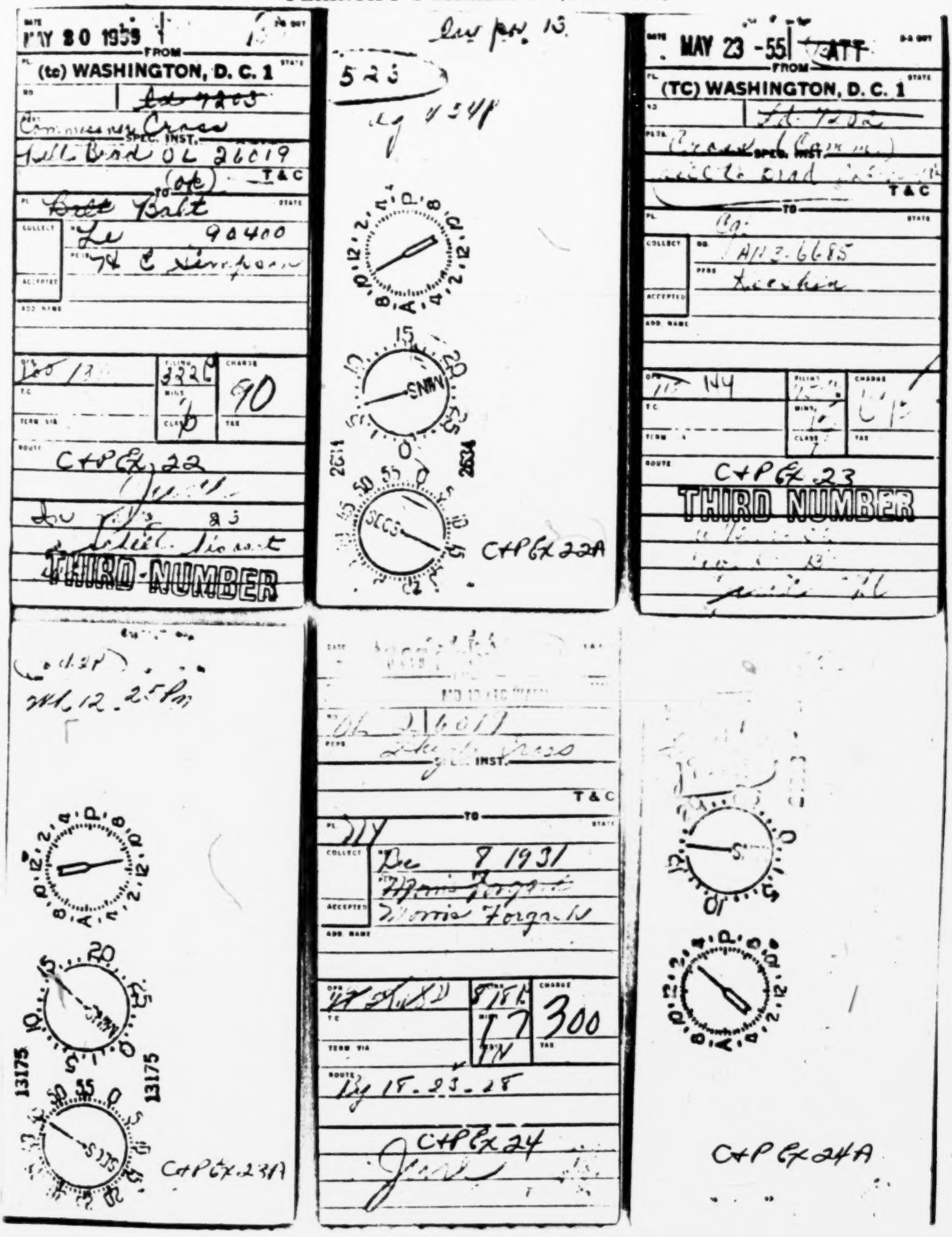

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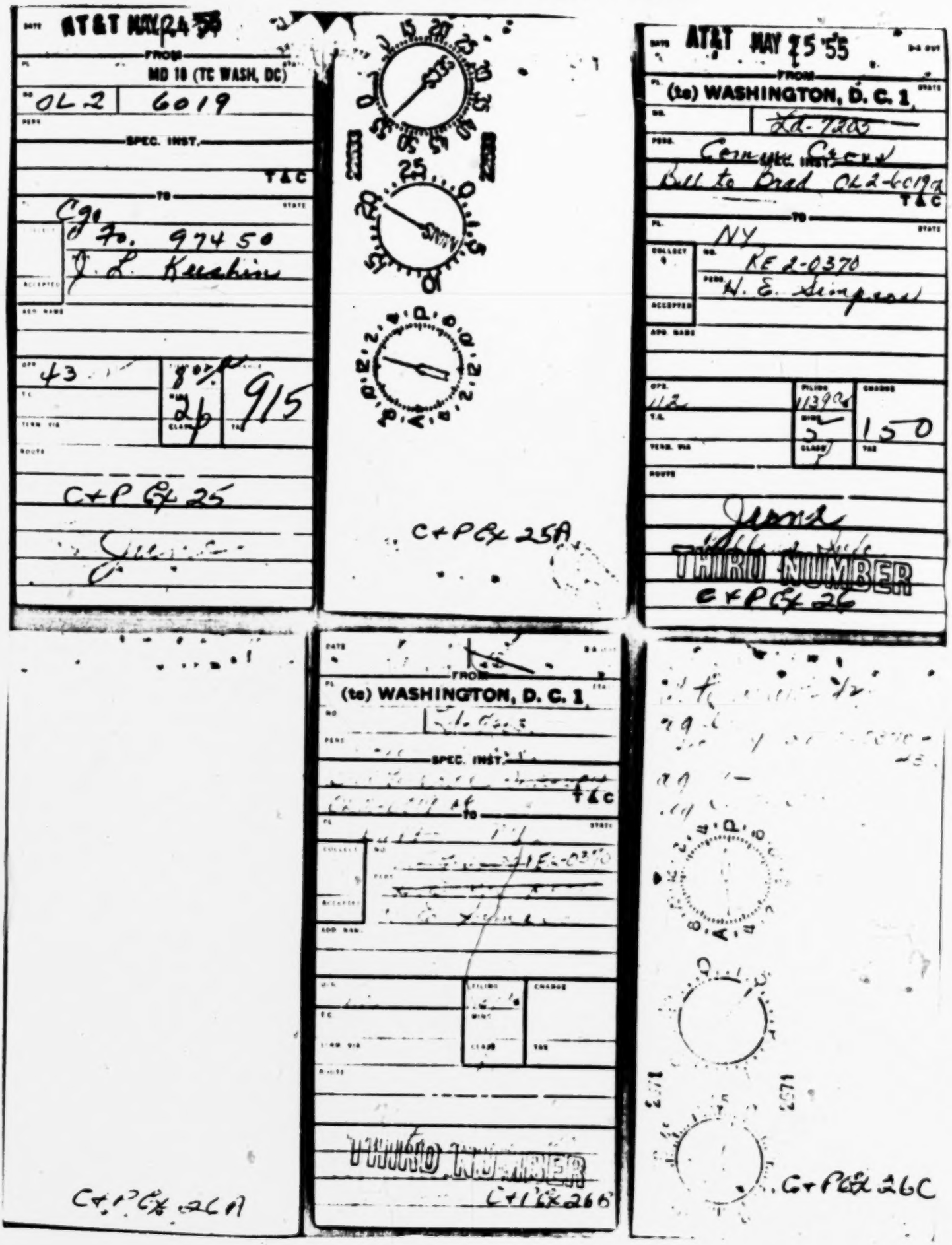

PLAINTIFF'S EXHIBIT 64 (Continued)

THE WESTERN UNION TELEGRAPH CO.

MAY 25
TELEG. OFFC. & DATE OF MESSAGE

OLI 2-6019

CHGO

CROSS

2 MSGS 190

C+P Ex 27

In above enter following, using double space between items:
CENTRAL OFFICE—TELEPHONE NUMBER
DESTINATION—(ORIGIN if collect msg.)
SIGNATURE OF SENDER
CHARGE (Excluding Tax)

WASHINGTON D C JUN 11 1955

THE WESTERN UNION TELEGRAPH CO.

MAY 25
TELEG. OFFC. & DATE OF MESSAGE

OLI 2-6019

CHGO

CROSS

95

C+P Ex 28

In above enter following, using double space between items:
CENTRAL OFFICE—TELEPHONE NUMBER
DESTINATION—(ORIGIN if collect msg.)
SIGNATURE OF SENDER
CHARGE (Excluding Tax)

WASHINGTON D C JUN 11 1955

JUN 8 -55 AM

FROM
(tc) WASHINGTON, D. C. 1

TO

THIRD NUMBER

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11-1-51

C+P Ex. 30A

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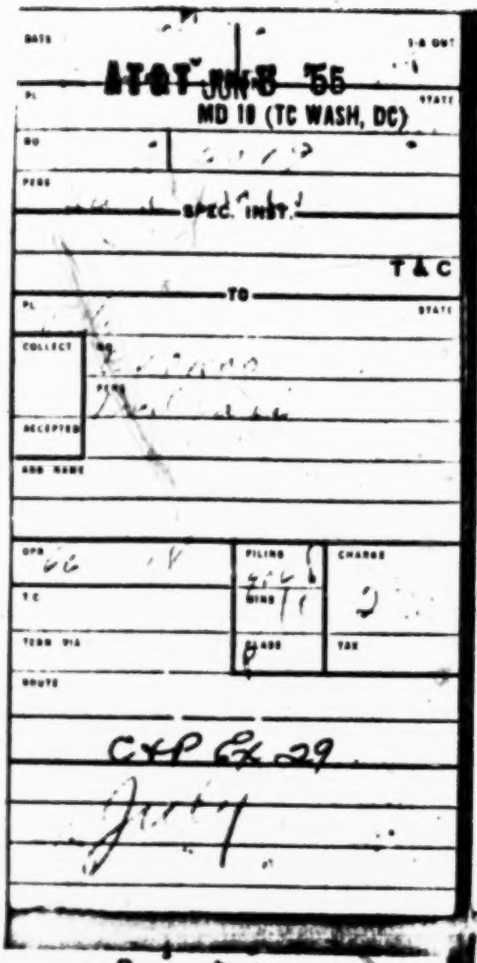

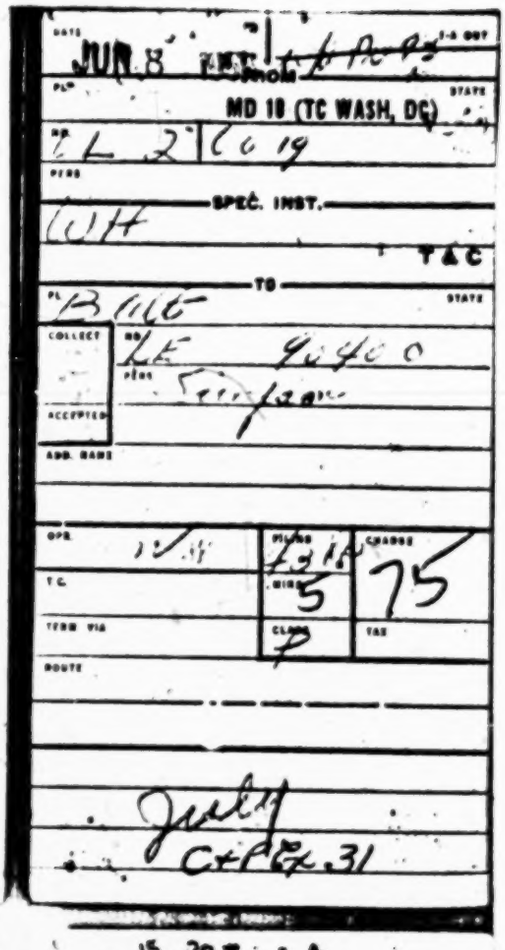

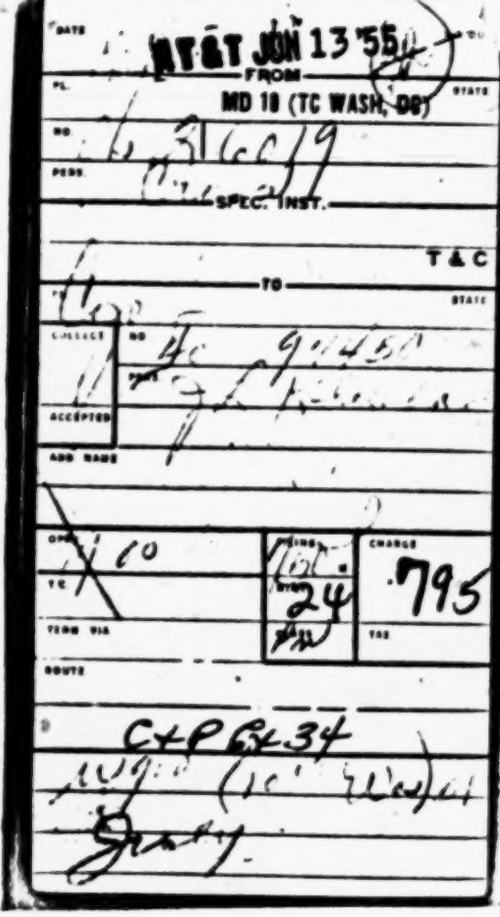

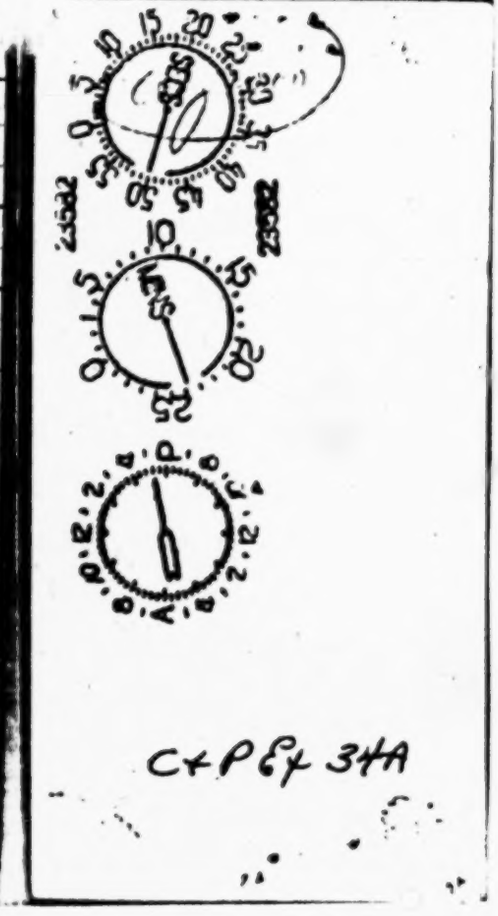

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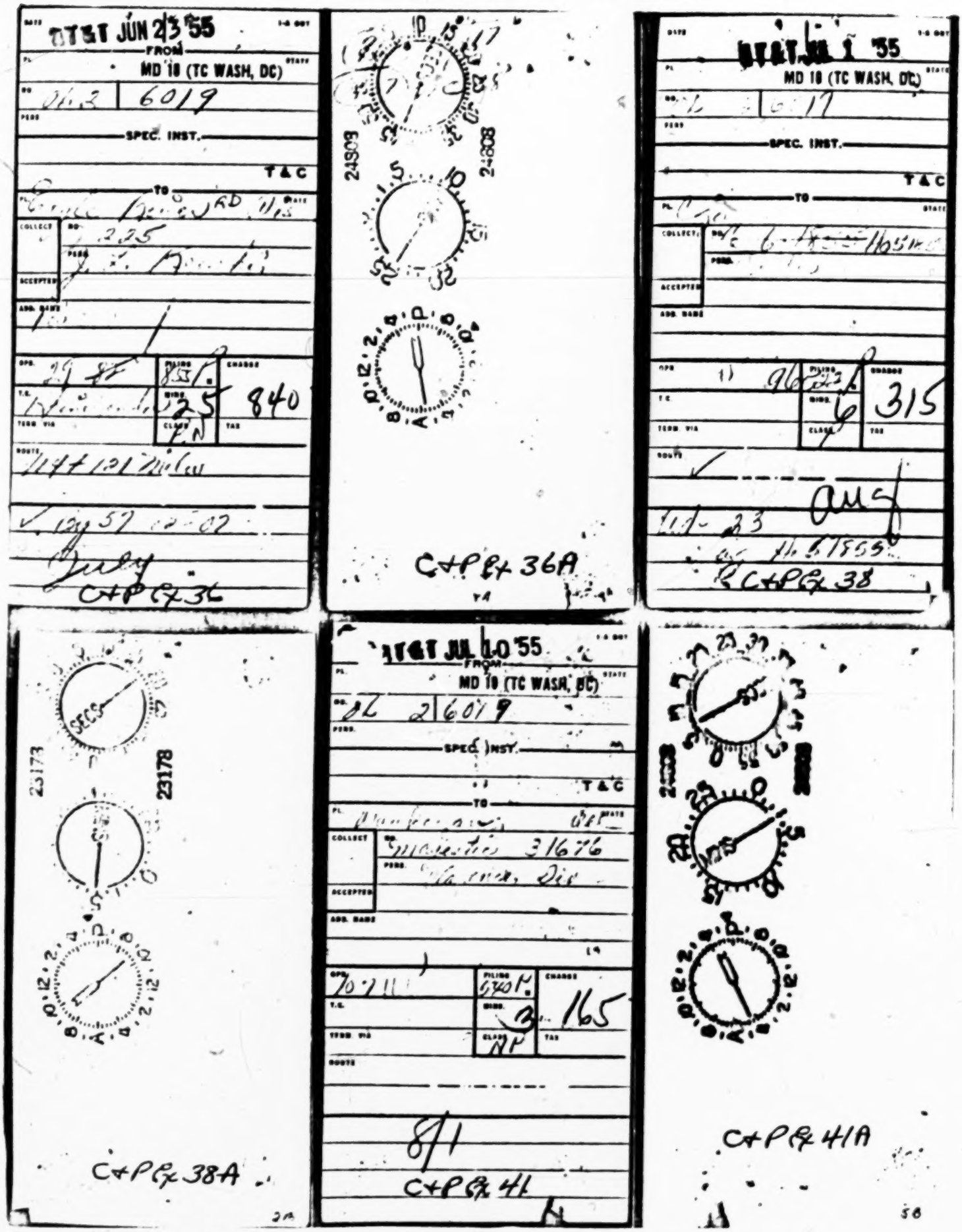

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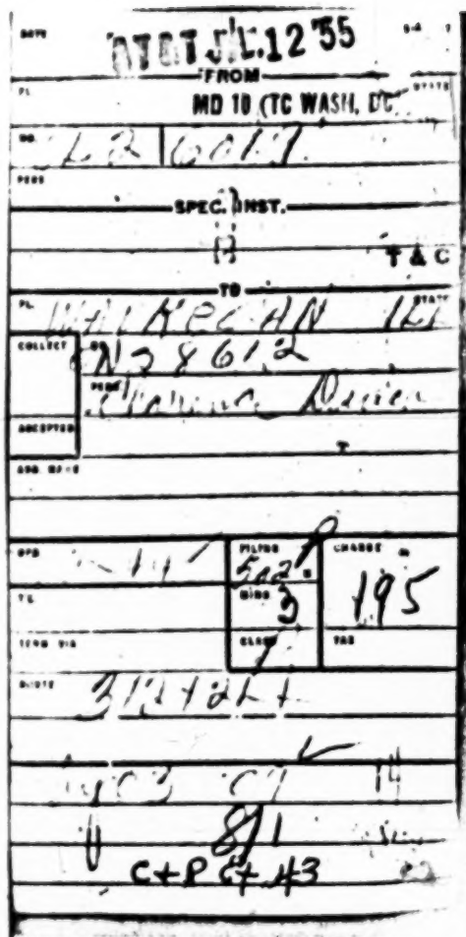
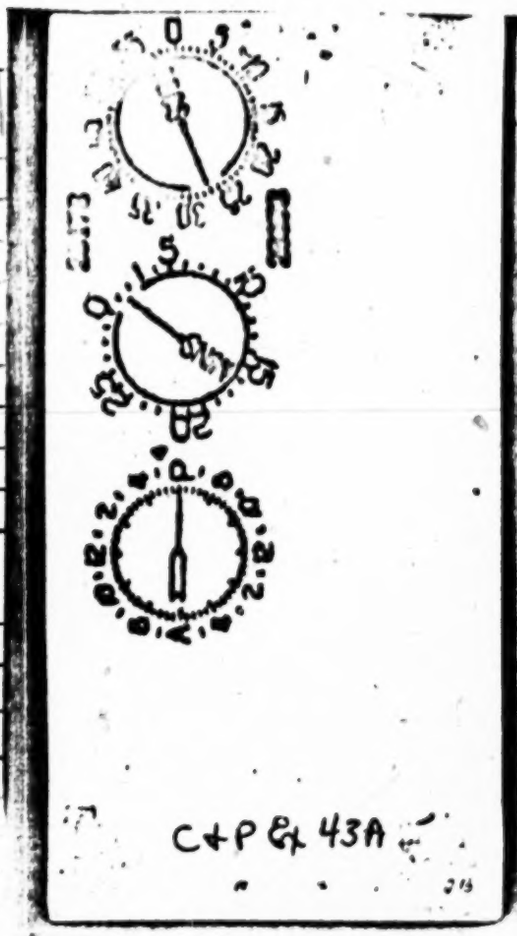
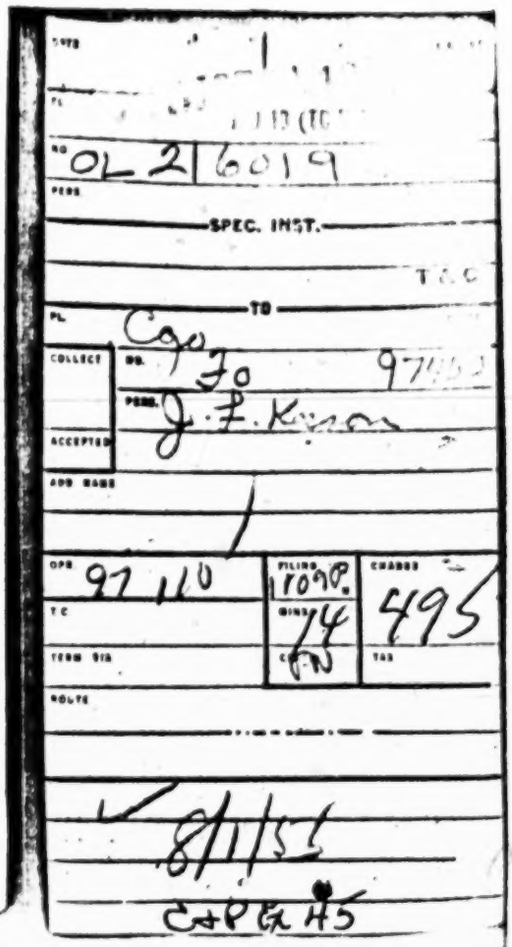
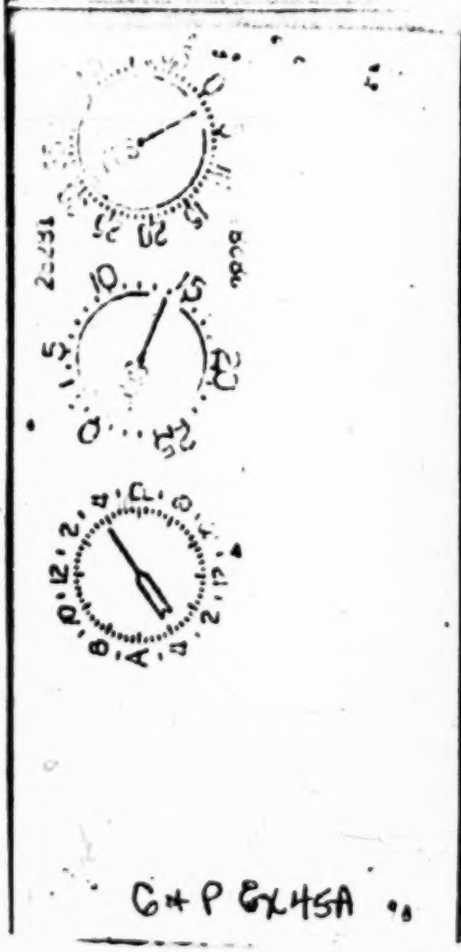
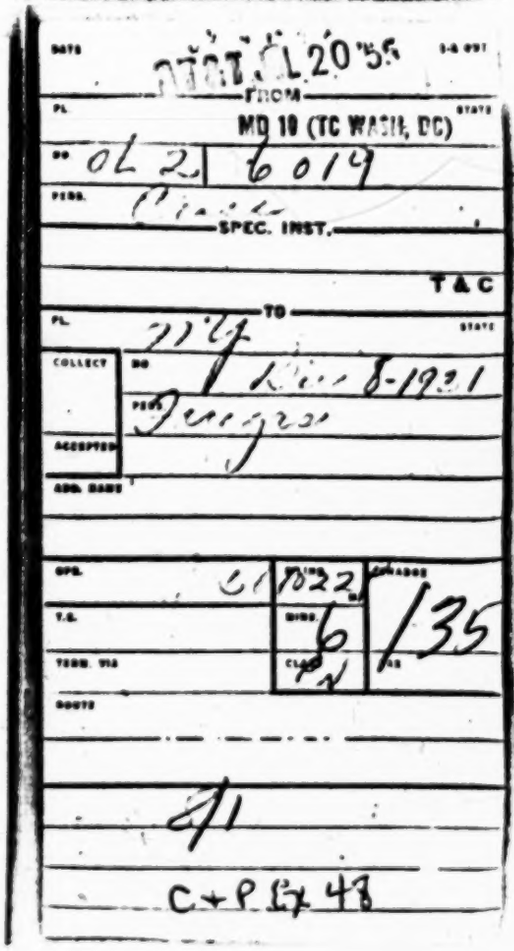
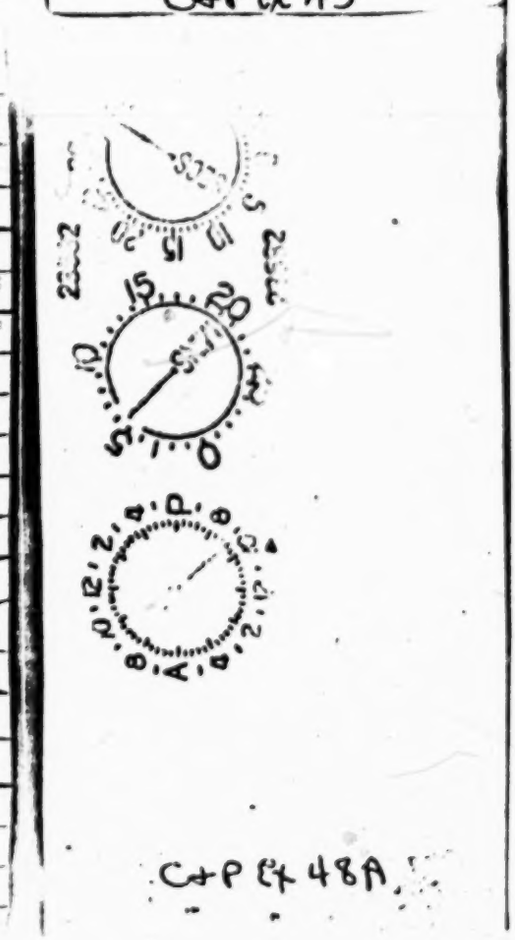




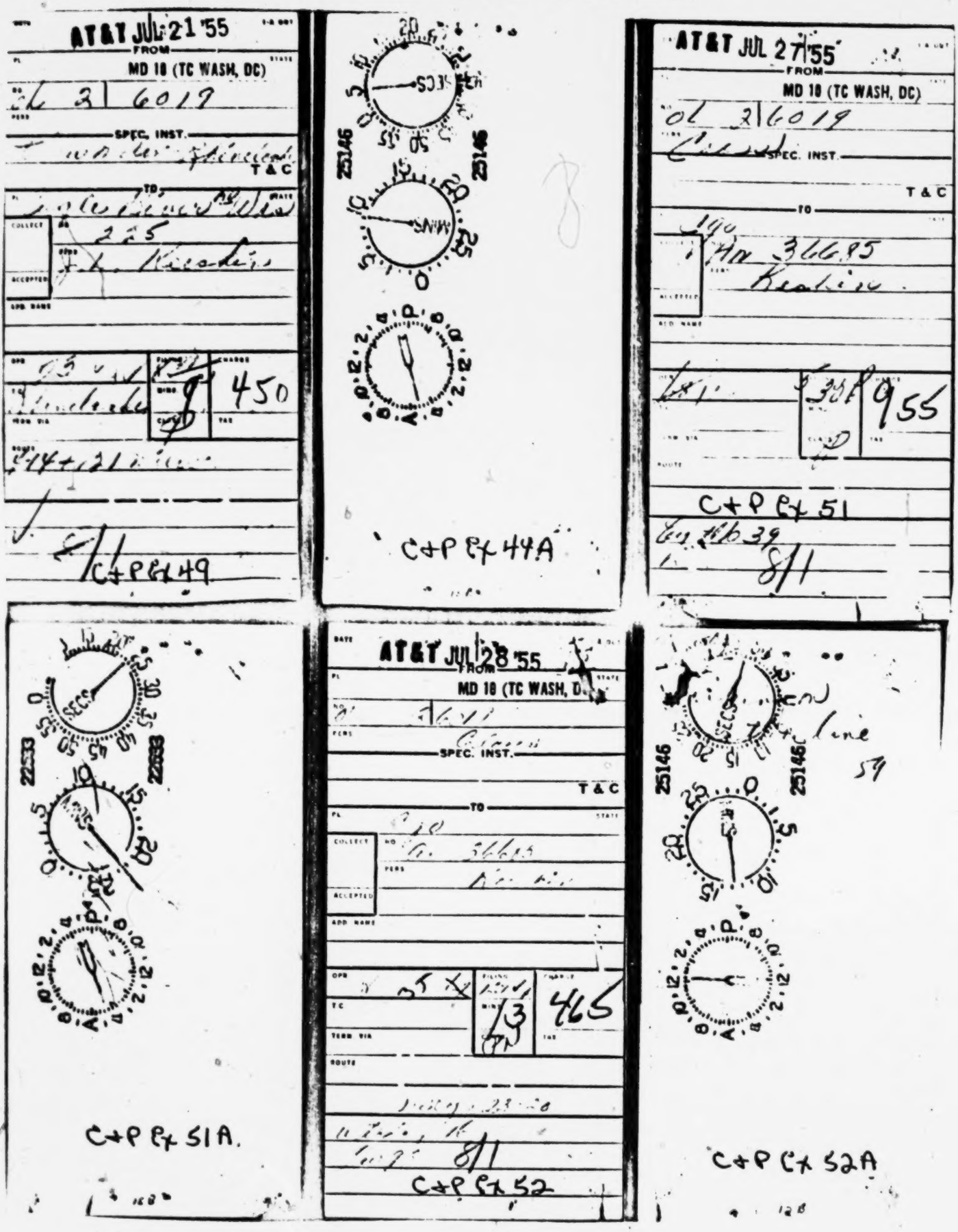




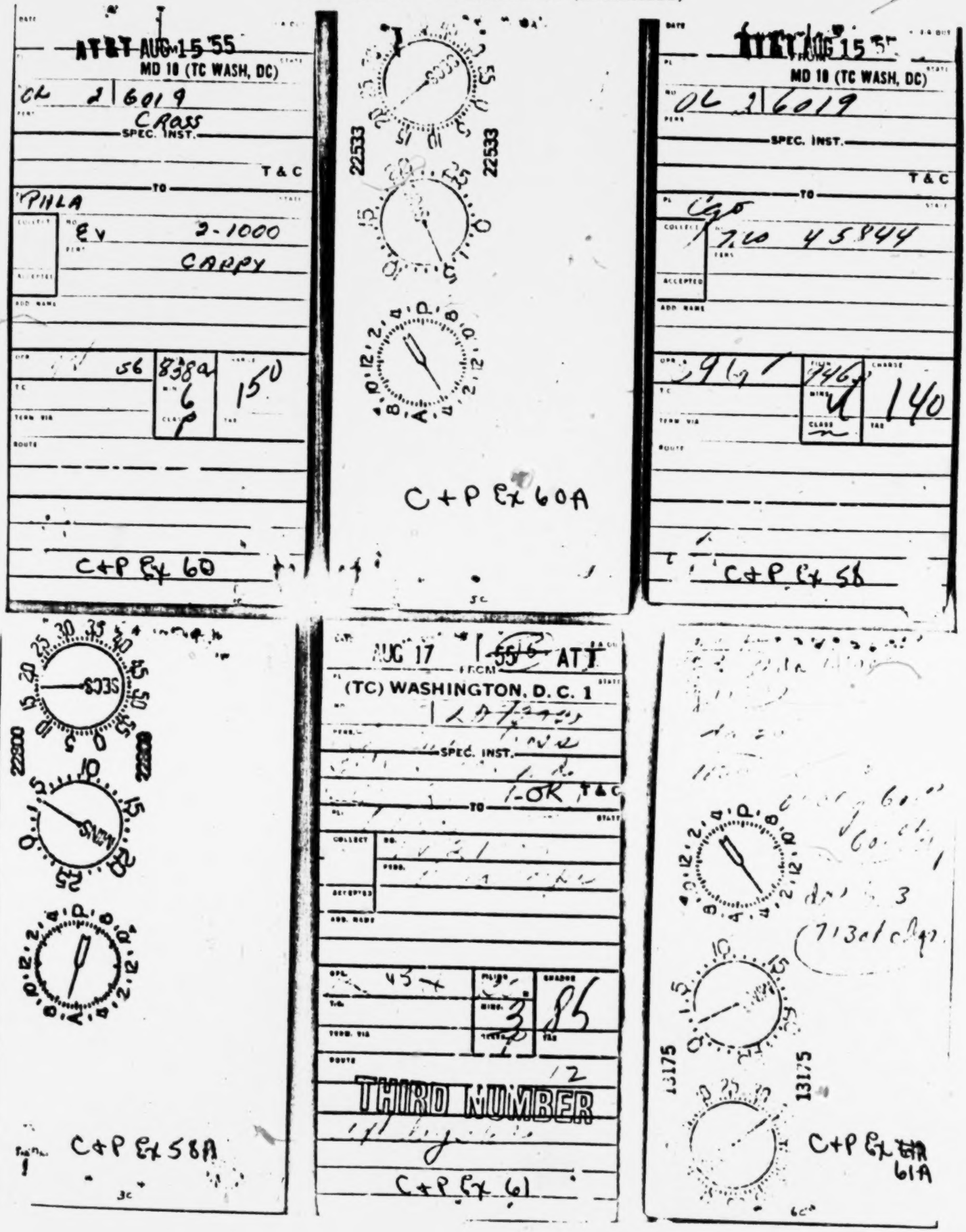




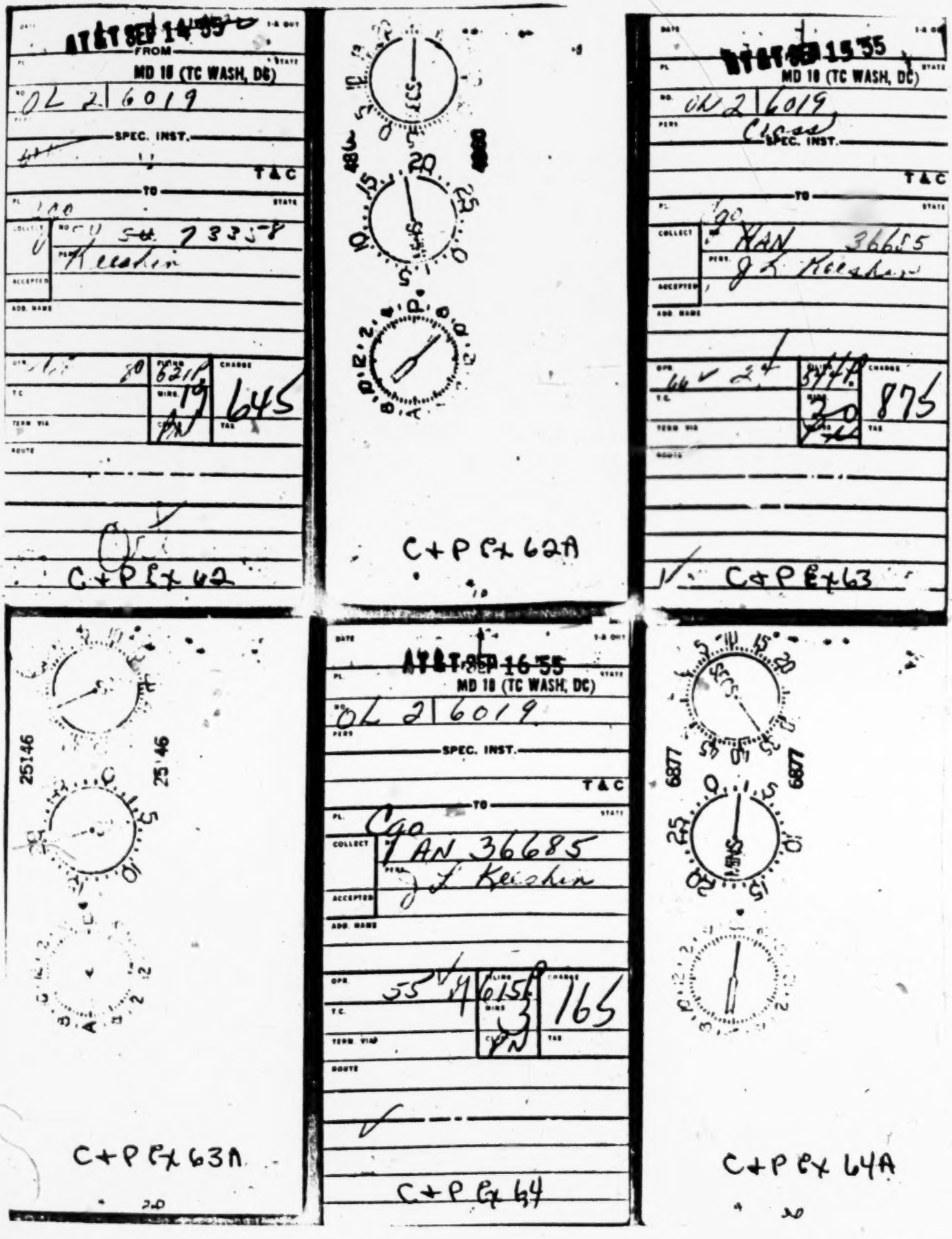
PLAINTIFF'S EXHIBIT 64 (Continued)



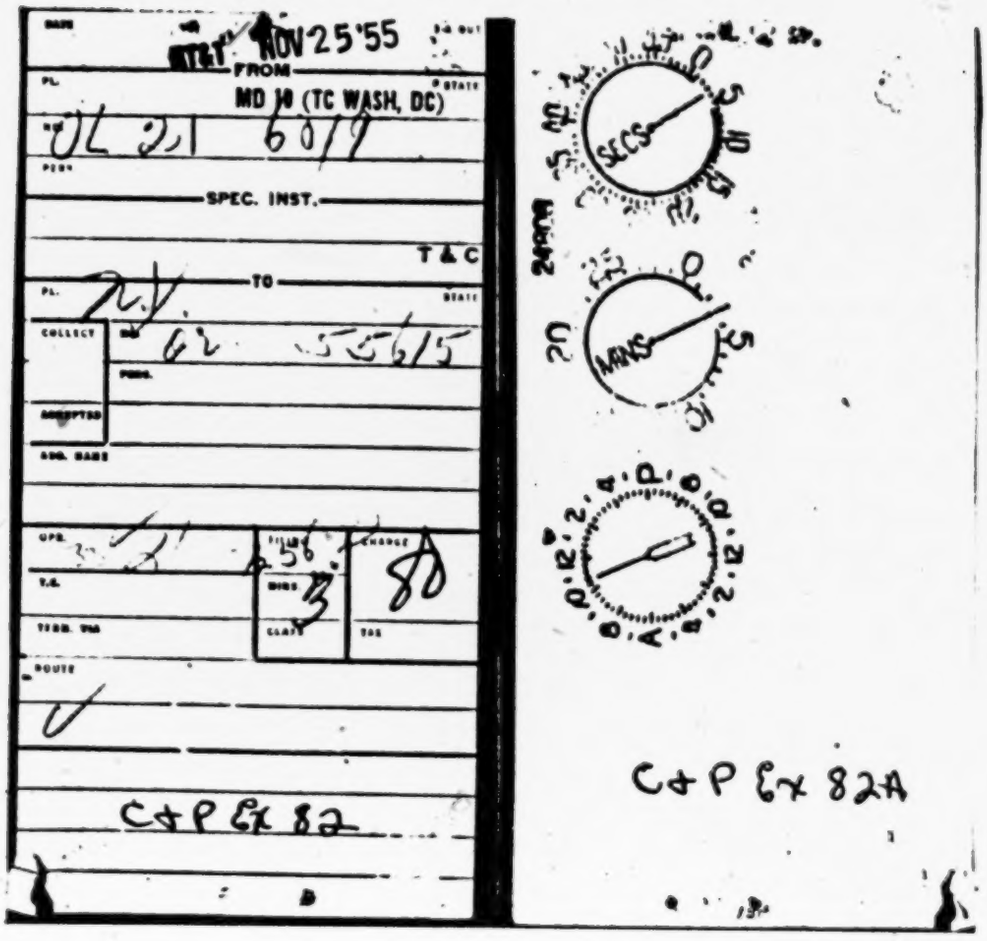
PLAINTIFF'S EXHIBIT 64 (Continued)



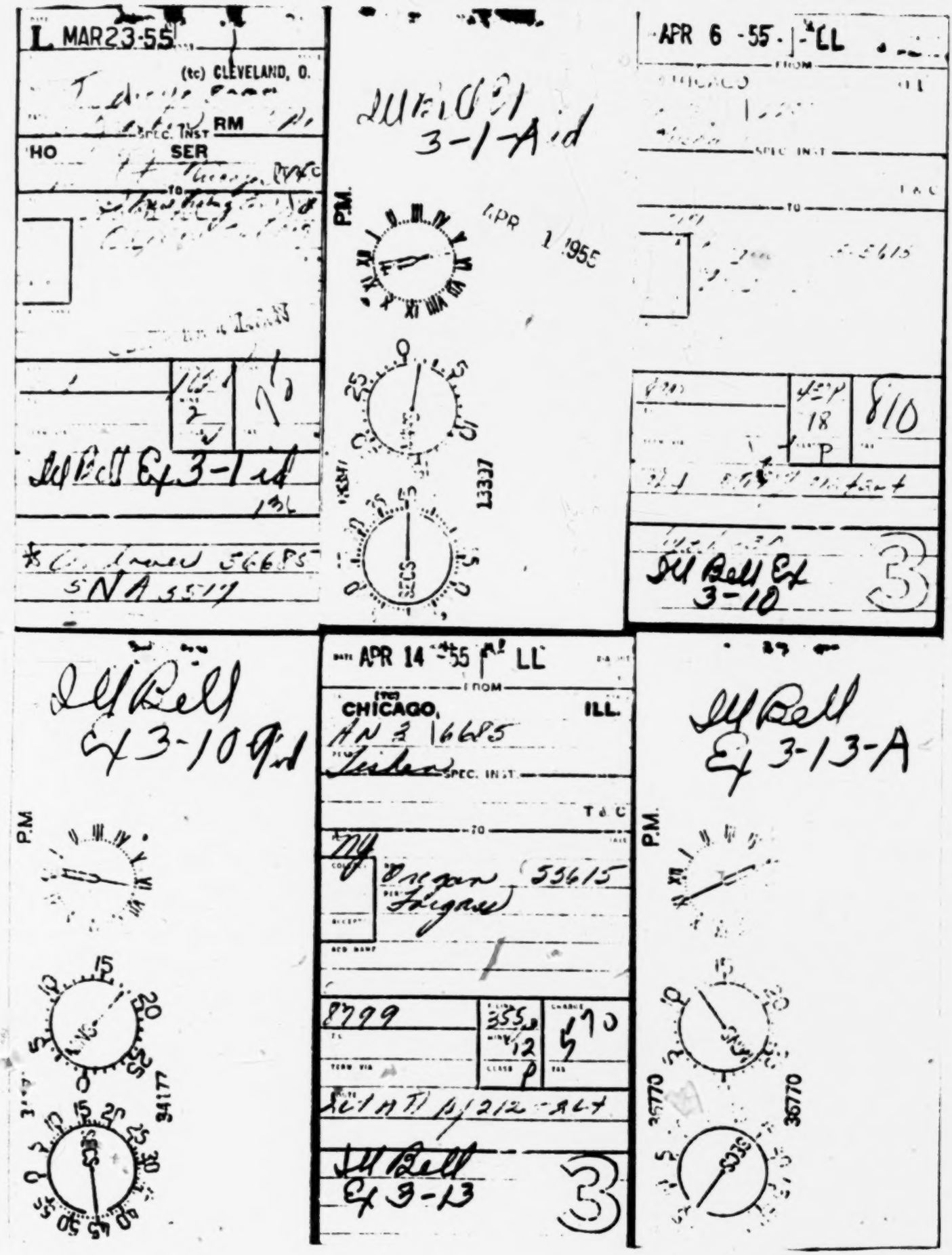
PLAINTIFF'S EXHIBIT 64 (Continued)



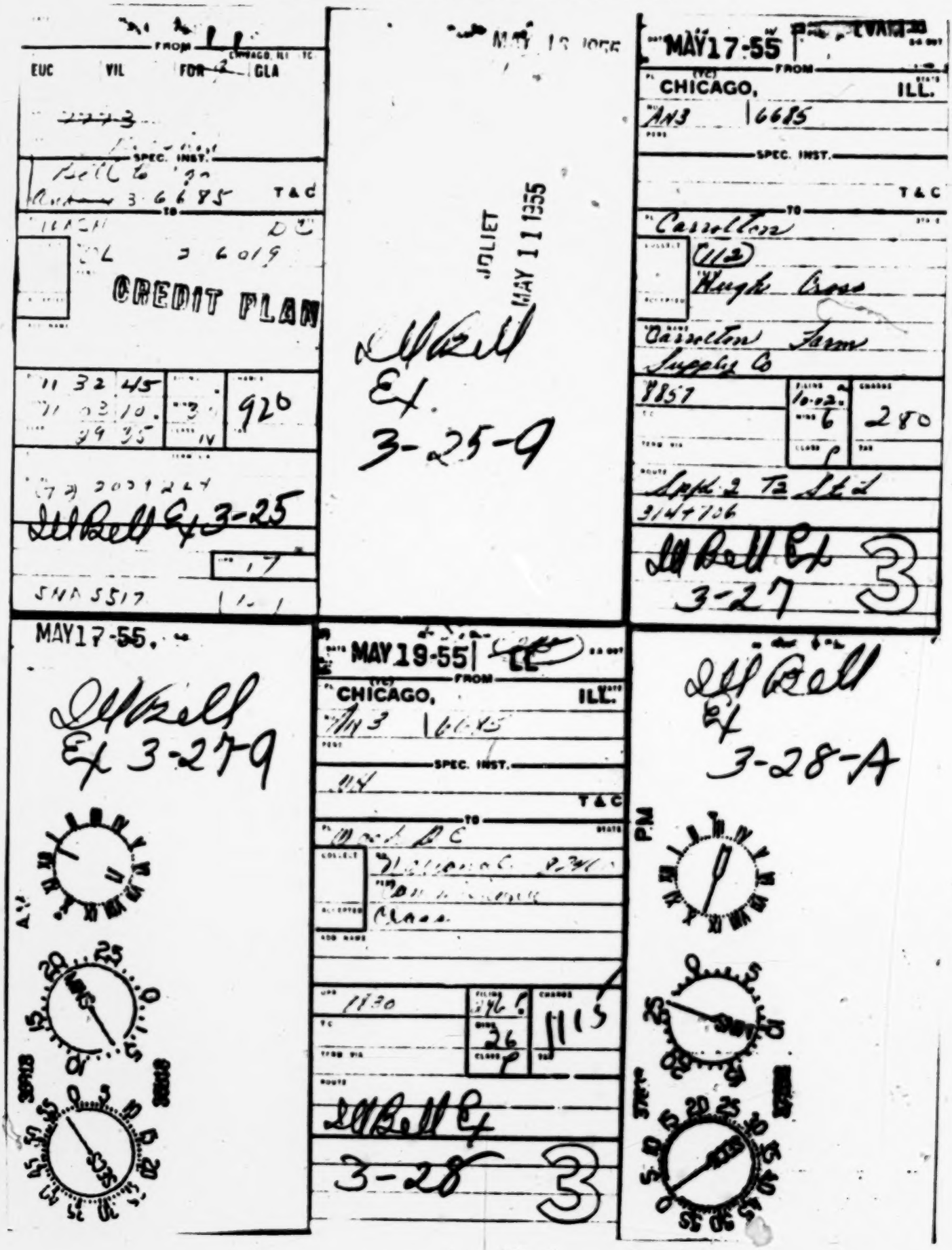
PLAINTIFF'S EXHIBIT 64 (Continued)



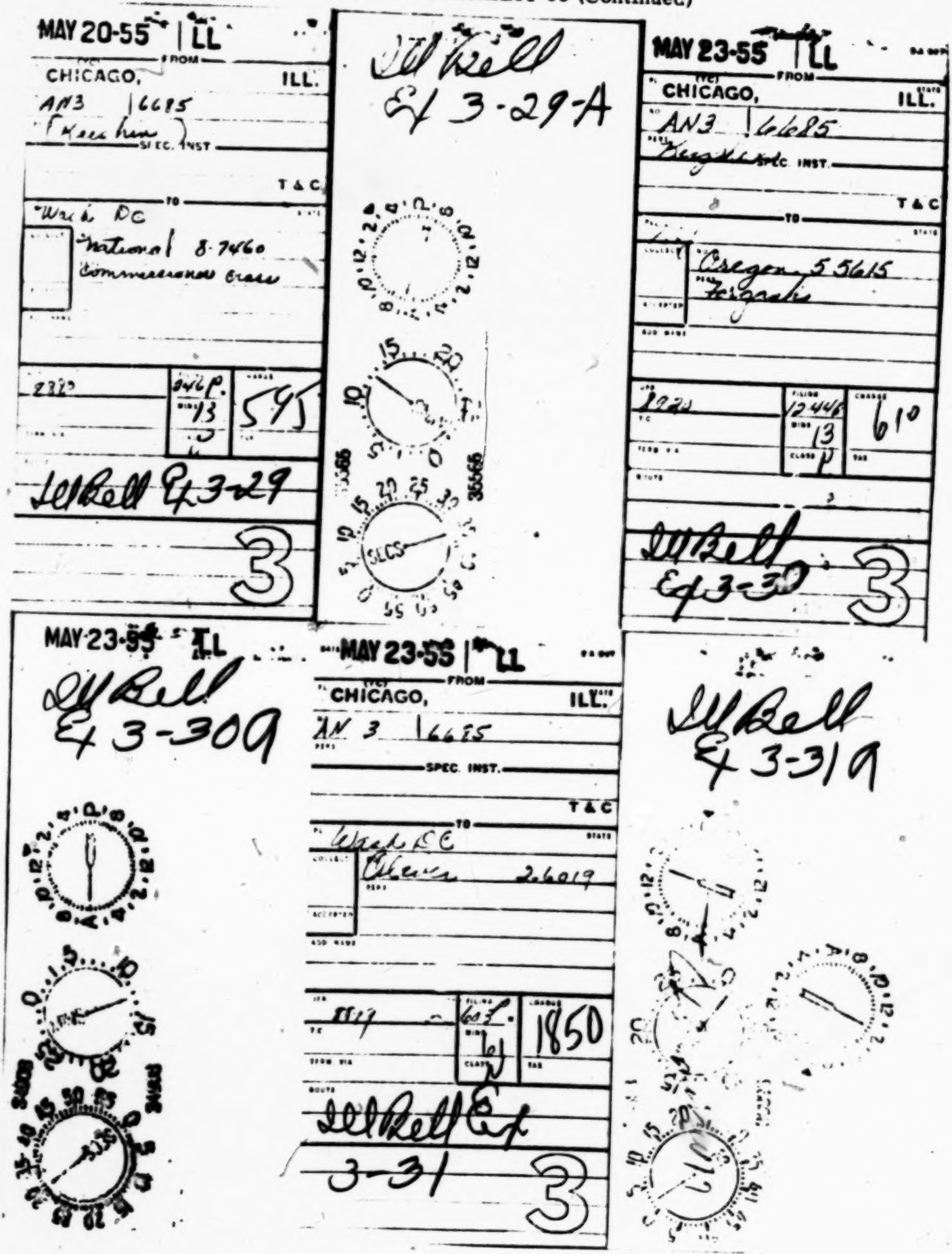
PLAINTIFF'S EXHIBIT 65



PLAINTIFF'S EXHIBIT 65 (Continued)



PLAINTIFF'S EXHIBIT 65 (Continued)



PLAINTIFF'S EXHIBIT 65 (Continued)

MAY 24 '55 LL

ILL.

Ill Bell Ex 3-329

Ill Bell Ex 3-329

JUN 3 '55 LL

FROM

CHICAGO ILL

AN3 16685

SPEC INST

TO

5-5615

8913

245P

50

Ill Bell Ex 3-36

Ill Bell Ex 3-36-9

P.M.

900

3623.50

JUN 8 '55 LL

Ill Bell Ex 3-37

Ill Bell Ex 3-37-9

PLAINTIFF'S EXHIBIT 65 (Continued)

JUN 13 55 LL

Ill Bell
Ex 3-38-A

JUL 21 1955 A. T. & T.

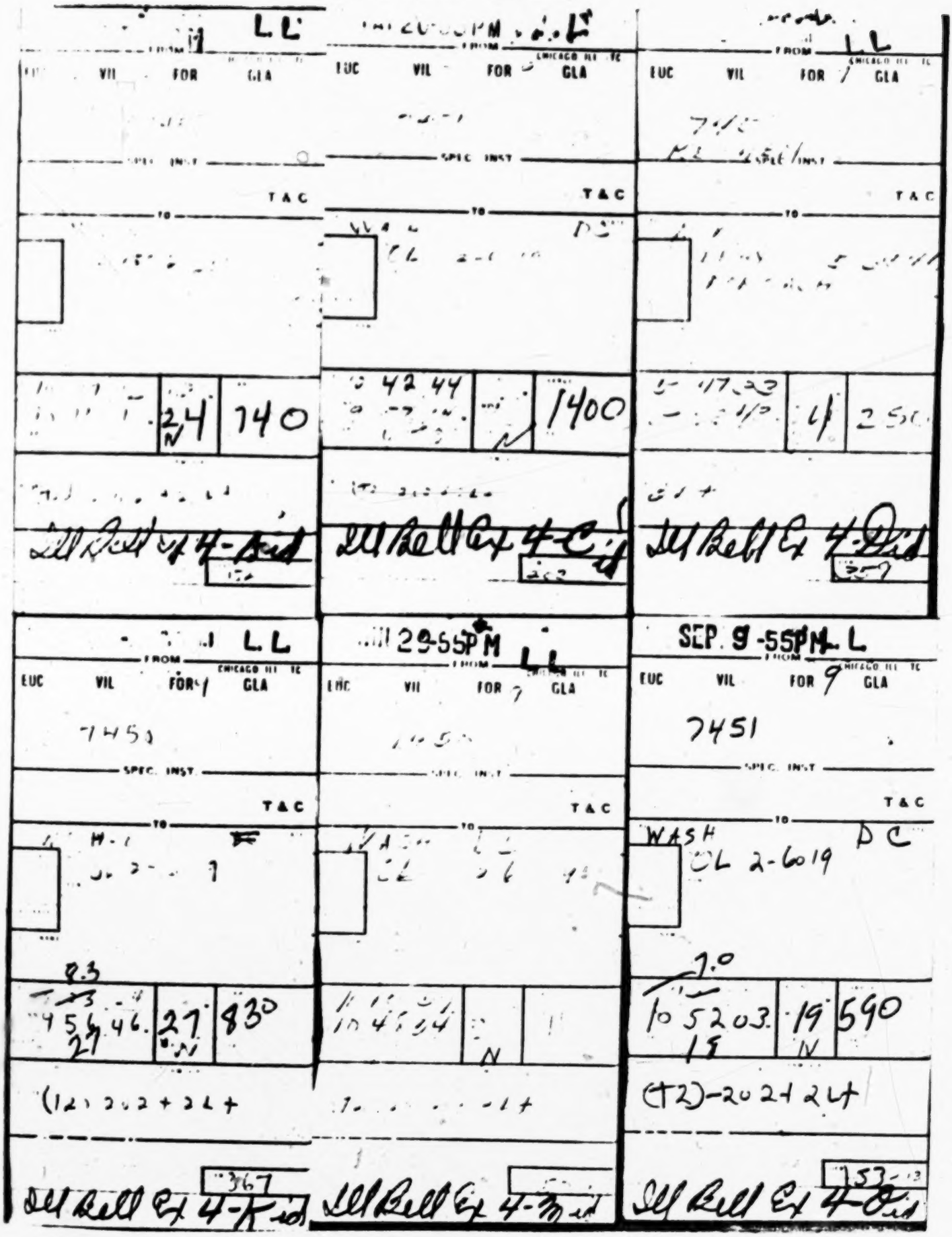
720

Ill Bell Ex 3-38

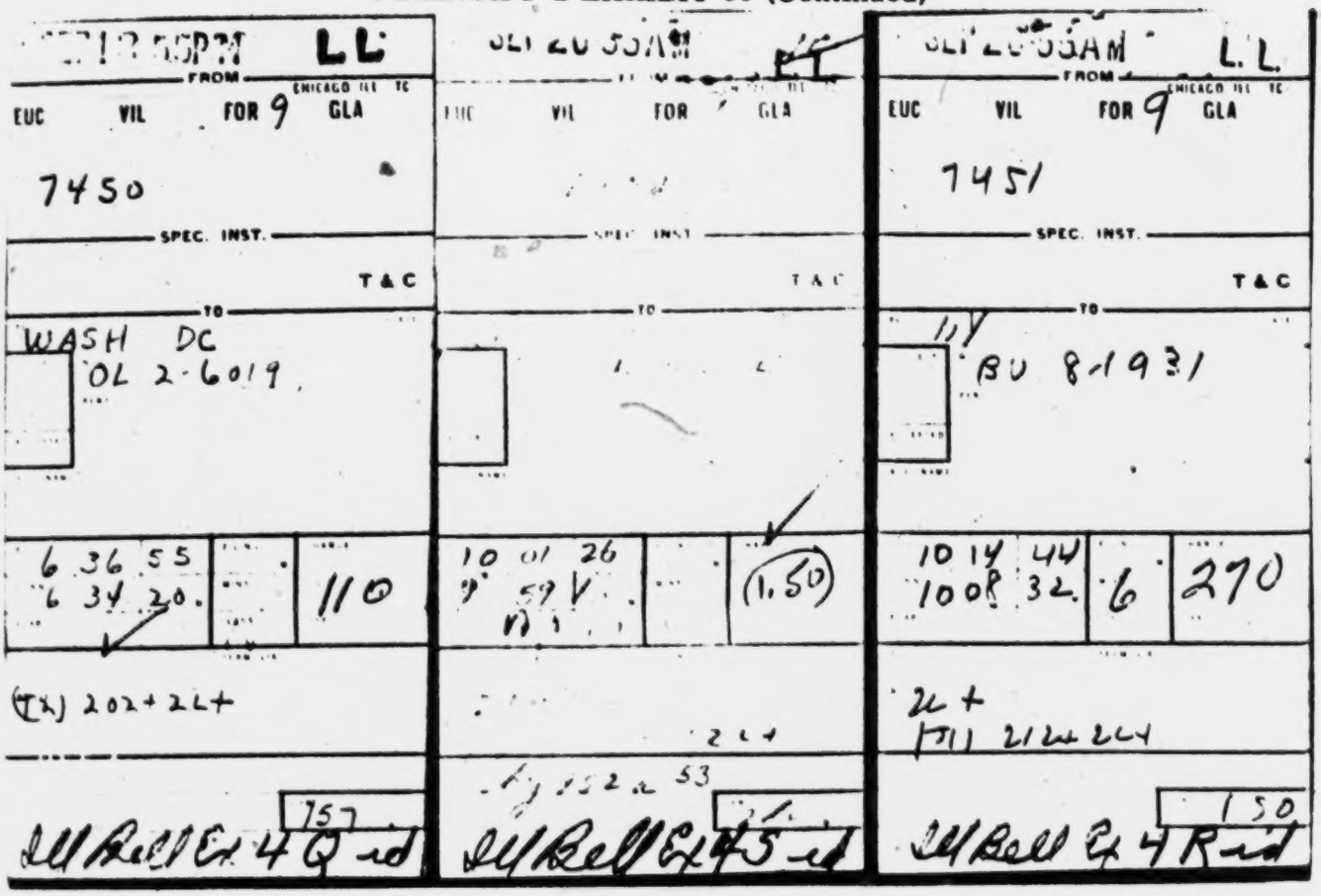
Ill Bell
Ex
3-559

AUG 3 1955

PLAINTIFF'S EXHIBIT 66



PLAINTIFF'S EXHIBIT 66 (Continued)



[illegible] 13 55PM LL	SEP 20 55AM LL	SEP 20 55AM L.L.
FROM CHICAGO ILL TC	FROM CHICAGO ILL TC	FROM CHICAGO ILL TC
EUC VIL FOR 9 GLA	EUC VIL FOR GLA	EUC VIL FOR 9 GLA
7450		7451
SPEC. INST.	SPEC. INST.	SPEC. INST.
T & C	T & C	T & C
TO	TO	TO
WASH DC OL 2-6019		11Y BU 8-1931
6 36 55 / 6 34 20 — 110	10 01 26 / 9 59 V — (1.50)	10 14 44 / 10 08 32 — 6 — 270
(TX) 202+2L+	2L+	2L+ (TX) 212+2L+
757	152 a 53	150
Ill Bell Ex 4Q id	Ill Bell Ex 4S id	Ill Bell Ex 4R id

PLAINTIFF'S EXHIBIT 67

TOTAL CARRIED TO BILL

NEW YORK TELEPHONE COMPANY
TOLL CALLS AND TELEGRAMS

FORGASH EX 2 ID
3/15/57 [illegible]

ORE 5 5600

APR		
6	FROM BIRMINGHAM	2 95
	FROM "	1 60
	HAVANA	19 70
	FROM SYRACUSE	1 35
	CY TO DETROIT	5 60
	FROM WASH	1 10
	FROM "	1 10
	FROM "	1 30
	FROM WILKES-BARRE	1 05
	FROM "	60
	FROM CLEVELD	3 10
	FROM NWK	40
7	CHICAGO	3 70
	CHICAGO	3 50
	CHICAGO	9 70
	CHICAGO	4 10
	HARTFD	1 35
	BRIDGEPT	1 20
	WILKES-BARRE	90
	INDIANAPOLIS	3 80
	CARROLLTN	3 15
	WORCESTER	1 10
	BRIDGEPT	1 10
	SPRINGFLD	2 05

10% U.S. TAX

TOTAL CARRIED TO BILL

NEW YORK TELEPHONE COMPANY
TOLL CALLS AND TELEGRAMS

ORE 5 5600

MAY		
17	OLD SWICH	35
	BLOOMFLD	15
	LOS ANGLES	2 50
	LOS ANGLES	2 50
	PHOENIX	7 50
	ROCHESTER	1 00
	SYRACUSE	85
	PRINCETN	80
	PRINCETN	60
	PHILA	70
	PHILA	70
	WASH	1 10
	WASH	2 60
	WASH	1 10
	WORCESTER	1 20
	CHICAGO	10 90
	CHICAGO	1 90
	BALTO	2 45
	HARTFD	60
	CARRILTON	2 25
	BOSTON	2 05
	NWK	20
	FROM BUFFALO	1 05

10% U.S. TAX

NEW YORK TELEPHONE COMPANY
TOLL CALLS AND TELEGRAMS

ORE 5 5600

FORGASH EX 5 ID
3/15/57

TOLL CREDIT PLAN

MAR		
29	DOWINGTN TO NY	1 05
APR		
1	HENDERSON TO NY	1 10
MAY		
11	PHILA TO MOBILE	6 00
25	ARLINGTN TO SUMMIT	75
26	NY TO NORFOLK	4 25
	J CY TO NORFOLK	3 00
	NY TO CHICAGO	8 10
27	NY TO HOUSTON	2 85
	NY TO "	5 60
	NY TO "	6 70
28	NY TO WASH	1 50
29	NY TO CHICAGO	13 50
30	NY TO EAGLE RIV	7 20
31	NY TO WASH	1 10
JUN		
1	CHICAGO TO NY	1 80
2	NY TO WASH	5 10
	NY TO DENVER	3 55
	WASHTO NY	1 70
	ARLINGTN TO DENVER	4 50
4	NY TO CHICAGO	22 50
5	NY TO JERSEYVL	1 20

10% U.S. TAX

NEW YORK TELEPHONE COMPANY
TOLL CALLS AND TELEGRAMS

ORE 5 5600

FORGASH EX 3 ID
3/15/57 [illegible]

JUN		
8	FROM BRIDGEPT	1 00
	FROM WASH	1 90
	FROM "	1 60
	FROM "	2 60
	FROM "	1 10
	FROM "	2 10
	RUTHERFD	30
	"	15
	J CY	15
	"	20
	B SHR	1 80
	RUTHERFD	15
	"	15
	WOODBDG	50
	WASH	1 10
	"	1 10
	"	1 10
	"	1 30
	CARROLLTON	3 15
	HARTFD	60
	CINCINNATI	1 35
	CLEVELD	1 15
	SPRINGFLD	1 35
	PHOENIX	3 90
	CLEVELD	3 85
	DETROIT	2 10

10% U.S. TAX

PLAINTIFF'S EXHIBIT 67 (Continued)

NEW YORK TELEPHONE COMPANY
TOLL CALLS AND TELEGRAMS

ORE 5 5600

JUN			
13	ST LOUIS	5	40
	TOLEDO	1	80
	ATLANTA	4	50
	CINCINNATI	2	25
	FRAMINGHAM	1	05
	BEDFD	1	85
	BALTO	1	10
	BUFFALO	1	05
	DETROIT	1	75
	MILLVL		85
	CHICAGO	2	70
	CARROLLTON	3	60
	CHICAGO	2	30
	"	1	90
	"	2	70
	"	2	90
	NWK		25
	EATONTN		55
	NWK		15
	RUTHERFD		40
	HBKN		10
	BUFFALO	3	20
14	FROM BEVERLY	2	50
	FROM CLEVELD	5	50
—	FROM "	1	90

10% U.S. TAX

TOTAL CARRIED TO BILL

Statement A
NEW YORK TELEPHONE COMPANY
TOLL CALLS COMPLETED
BY OPERATOR, AND TELEGRAMS

OR 5 5600

OCT			
23	CY TO JERSEYVL	7	20
23	CY TO WASH		05
24	CY TO PHILA	2	65
	MESSAGE UNIT PERSON TO PERSON AND COLLECTCALLS		
5600			
SEP			
22	FROM FLORAL PK		25
OCT			
6	FROM EDGEWD		35
6	FROMGLEN COVE		35
11	FROM WESTMORE		35
14	FROMFLORAL PK		25
19	FROM PIONEER		35
20	FROM PIONEER		30
	MOBILE CONNECTION		
OCT			
5	COLUMBUS	1	75
—			

10% U.S. TAX

TOTAL CARRIED TO BILL

Statement A
NEW YORK TELEPHONE COMPANY
TOLL CALLS COMPLETED
BY OPERATOR, AND TELEGRAMS

OR 5 5600

OCT			
19	FROM DAYTONA BCH	5	65
19	WASH	1	10
21	WASH		80
21	WASH	1	30
22	WASH		80
	WASH		80
	WILLIAMSBG	1	35
24	CHICAGO	6	50
	LOS ANG	3	50
	JERSEYVL	2	25
	WASH	1	40
	WASH	1	10
25	WASH		80
25	WASH		80
—			

10% U.S. TAX

TOTAL CARRIED TO BILL

Statement A
NEW YORK TELEPHONE COMPANY
TOLL CALLS COMPLETED
BY OPERATOR, AND TELEGRAMS

OR 5 5600

5600

OCT			
17	WASH TO ORGL		85
18	CLEVELD TO TOLEDO	1	25
25	WASH TO CY		90
	WASH TO SCARSDALE	1	35
25	CINCINNATI TO MT VERNON	2	30
	WASH TO CY		90
26	CY TO LOS ANG	15	10
	WASH TO SCARSDALE	1	20
	WASH TO CY		80
	WASH TO LOS ANG	3	00
27	WASH TO SCARSDALE	1	10
	WASH TO JERSEYVL	6	30
	WASH TO CY	1	20
	CY TO JERSEYVL	1	30
	CY TO CHICAGO	3	30
	WASH TO CY		80
28	DAYTON TO MT VERNON	3	75
	ARLINGTN TO CY		80
29	CY TO JERSEYVL	2	70
	TORRINGTN TO SCARSDALE		40
—			

10% U.S. TAX

TOTAL CARRIED TO BILL

PLAINTIFF'S EXHIBIT 67 (Continued)

Statement A

NEW YORK TELEPHONE COMPANY

TOLL CALLS COMPLETED BY OPERATOR, AND TELEGRAMS

Forgoshe 36 1D
3/11/07

BU 8 1931

-		
-	WASH	1 10
OCT		
17	FROM BRADLEY	1 20
26	WASH	90
27	"	1 10
29	B SHR	70
	WOODSIDE TLGRM	1 77
NOV		
1	PHOENIX	8 10
	"	3 90
	"	3 90
	WASH	1 10
	"	1 70
	"	1 65
3	CITY TLGRM	3 03
	FROM WASH	4 50
6	"	2 85
	FROM CONCORD	3 15
	FROM WASH	3 90
9	FROM BRADLEY	5 40
11	"	1 10
12	B SHR	40
15	WASH	90

10% U.S. TAX

TOTAL CARRIED TO BILL

A-1481-A 8-84

Statement B

NEW YORK TELEPHONE COMPANY

CUSTOMER DIALED TOLL CALLS

BU8-1931

DATE	PLACE	AREA	EXCH	AMOUNT
10-29	NJ	11	ORa4	.20
11-16	NJ	11	ORa4	.20
11-16	NJ	11	DRe6	.35
11-24	NJ	11	ORa4	.20
11-25	NJ	11	ORa4	.20
11-25	NJ	11	ORa4	.20

PLEASE SEE YOUR DIRECT DIALING BOOKLET FOR PLACES YOU MAY DIAL

TOTAL U. S. TAX .14

TOTAL CARRIED TO BILL 1.49

PLAINTIFF'S EXHIBIT 68

From		$	¢
From No. 214	Name M Forgash		
To			
Place	Philadelphia Pa		E-3-E
No.	Evergreen 21000	Evans Exhibit	3-E
Name	Carfi		
Alternate			
Time	209p Q.E. 225p		
Report			
Minutes	7284 6 min	1.	30
			13
Date	4/15/55	1.	43
Operator	Charge		

[redacted] HOTEL

PLAINTIFF'S EXHIBIT 69

Plaintiffs Exhibit 69 Defendants Exhibit (✓) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division No. BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

56e 3x3

SUMMARY OF TELEPHONE TOLL SLIPS OFFERED THROUGH THE TESTIMONY OF WITNESSES, WORTHINGTON, CAMPBELL, ENNIS AND FORGASH

Date 1955	From	To	Time	Duration in Minutes (or cost)	Deposition Exh.No.
3/23	Keeshin (Cleveland) bill to Chicago	Cross (Md. home) OL. 2-6019	10:25 PM	2	Ill.Bell Ex. 3-1
4/6	Keeshin (Chicago)	Forgash (NY Or.5-5615)	4:30 PM	18	Ill.Bell Ex. 3-10
4/6	Cross (Md. home)	Keeshin (River Forest)	11:18 PM	16	C&P Ex. 3D
4/7	Forgash	Carrolton (Hugh E.Cross)		$3.15	Forgash Ex. 2
4/14	Keeshin (Chicago)	Forgash (NY Or.5-5615)	3:55 PM	12	Ill.Bell Ex.3-13
4/15	Forgash (Wash.,DC)	Carpi VP Pa. RR			Ennis Ex. 3-E
4/15	Cross (Md. home)	Keeshin (River Forest)	9:43 PM	18	C&P Ex. 4
4/16 (Sat.)	Cross (Md. home)	Keeshin (River Forest)	6:00 PM	12	C&P Ex. 5

Date	From	To	Time	Duration in Minutes (or cost)	Deposition Exh. No.
4/18	Cross (L.D.7202-ICC) bill to Md. home	Carmi, VP, Pa. RR. Phila. off. EV.2-1000	2:01 PM	2	C&P Ex. 7
4/18	Cross (L.D.7202-ICC) bill to Md. home	Simpson, Pres. B&O Balt. off. Lex.9-0400	4:30 PM	3	C&P Ex. 6
4/25	Cross (Md. home)	Keeshin (River Forest)	8:00 PM	15	C&P Ex. 8B
4/26	Cross (L.D.7203-ICC) bill to Md. home	Carmi, VP, Pa. RR. Phila. office	10:47 AM	4	C&P Ex. 8D
4/28	Keeshin (River Forest)	Cross - Md. home	10:12 PM	24	Ill.Bell Ex. 4A
5/10	Keeshin (River Forest)	Cross - Md. home	11:03 PM	30	Ill.Bell Ex. 3-25
5/12	Cross (L.D.7203-ICC off., bill to Md. home)	Keeshin (Chicago)	9:51 AM	3	C&P Ex. 13
5/12	Cross (L.D.7202-ICC off., bill to Md. home)	Carmi, VP, Pa. RR. Phila. office	4:13 PM	3	C&P Ex. 14
5/13	Cross (Md. home)	Simpson, Pres. B&O Balt. office	4:26 PM	6	C&P Ex. 16
5/13	Cross (Md. home)	Feucht, Pres. C&NW, Chicago office	5:10 PM	11	C&P Ex. 17
5/15 (Sun.)	Cross (Md. home)	Keeshin (River Forest)	6:52 PM	6	C&P Ex. 18

Date	From	To	Time	Duration in Minutes (or cost)	Deposition Exh.No.
5/17	Forgash	Carrolton (Hugh E. Cross)		$2.25	Forgash Unnumbered
5/17	Keeshin (Chicago)	Hugh E. Cross (Carrolton, 112)	10:02 AM	6	Ill.Bell Ex.3-27
5/19	Keeshin (Chicago)	Cross (ICC office)	2:46 PM	26	Ill.Bell Ex.3-28
5/20	Keeshin (Chicago)	Cross (ICC office)	2:46 PM	13	Ill.Bell Ex.3-29
5/20	Cross (L.D.7203-ICC off., bill to Md. home)	Simpson, Pres. B&O RR Balt. office	3:22 PM	7	C&P Ex. 22
5/20	Keeshin (River Forest)	Cross (Md. home)	9:57 PM	46	Ill.Bell Ex.4-C
5/21 (Sat.)	Keeshin (River Forest)	Forgash (NY home)	5:44 PM	4	Ill.Bell Ex.4-D
5/23	Cross (L.D.7202-ICC, bill to Md. home)	Keeshin (Chicago)	11:51 AM	15	C&P Ex. 23
5/23	Keeshin (Chicago)	Forgash (NY office)	12:44 PM	13	Ill.Bell Ex.3-30
5/23	Keeshin (Chicago)	Cross (Md. home)	6:03 PM	61	Ill.Bell Ex.3-31
5/23	Cross (Md. home)	Forgash (NY home) But. 8-1931	8:18 PM	17	C&P Ex. 24
5/24	Cross (Md. home)	Keeshin (River Forest)	8:02 AM	26	C&P Ex. 25

PLAINTIFF'S EXHIBIT 69 (Continued)

Date	From	To	Time	Duration in Minutes (or Cost)	Deposition Exh.No.
5/24	Keeshin (Chicago)	Cross (ICC office)	11:31 AM	9	Ill.Bell Ex.3-32A
5/25	Cross (Md. home)	Simpson, Pres. B&O RR. [illegible] FE.2-0370. Balt.off. tried first and report that MES would be in tomorrow.	11:39 AM	5	C&P Ex. 263
5/25	Three telegrams to Chicago,	bill to Cross Md. home telephone			C&P Ex. 27 & 28
5/20	Forgash	Keeshin (Eagle River)		$7.20	Forgash Ex. 5
6/3	Keeshin (Chicago)	Forgash (NY office)	2:45 PM	1	Ill.Bell Ex. 3-36
6/5 (Sun.)	Forgash	Jerseyville (Hugh E.Cross)		$1.20	Forgash Ex. 5
6/3	Keeshin (Chicago)	Cross (ICC office)	8:48 AM	5	Ill.Bell Ex. 3-37
6/3	Cross (L.D.7202-ICC off., bill to Md. home)	Keeshin (Chicago) Placed Completed	10:02 AM 11:50 AM	17	C&P Ex. 30
6/3	Cross (Md. home)	Carpi, VP Pa. (Phila. office)	4:06 PM	10	C&P Ex. 29
6/3	Cross (Md. home)	Simpson, Pres. B&O Balt. office	4:33 PM	5	C&P Ex. 31

PLAINTIFF'S EXHIBIT 60 (Continued)

Date	From	To	Time	Duration in Minutes (or Cost)	Deposition Exh.No.
6/3	Forgash	Carrolton (Hugh E.Cross)		$3.15	Forgash Ex. 3
6/13	Forgash	Carrolton (Hugh E.Cross)		$3.60	Forgash Ex. 4
6/13	Keeshin (Chicago)	Forgash (NY Or.5-5615)	10:07 AM	4	Ill.Bell Ex.3-38
6/13	Cross (Md. home)	Keeshin (River Forest)	7:50 PM	24	C&P Ex. 34
6/14	Keeshin (River Forest)	Cross (Md. home)	9:56 PM	27	Ill.Bell Ex. 4-K
6/23	Cross (Md. home)	Keeshin (Eagle River)	8:55 PM	25	C&P Ex. 36
7/1	Cross (Md. home)	Wilbur - HO.5-1855 Baird & Warner	5:22 PM	6	C&P Ex. 38
7/10 (Sun.)	Cross (Md. home)	Clarence Diver (Waukegan) Majestic 3-1676	5:40 PM	3	C&P Ex. 41
7/12	Cross (Md. home)	Clarence Diver (Waukegan) On. 2-8612	5:02 PM	3	C&P Ex. 43
7/12	Cross (Md. home)	Keeshin (River Forest)	11:09 PM	14	C&P Ex. 45
7/20	Cross (Md. home)	Forgash (NY home) But. 8-1931	10:22 PM	6	C&P Ex. 48
7/21	Cross (Md. home)	Keeshin (Eagle River)	8:39 PM	9	C&P Ex. 49

PLAINTIFF'S EXHIBIT 69 (Continu

—287—

Date	From	To	Time	Duration in Minutes (or Cost)	Deposition Exh. No.
7/21	Keeshin (Eagle River)	Cross (Md. home)	10:00 PM	23	Ill.Bell Ex.3-55
7/27	Cross (Md. home)	Keeshin (Chicago)	5:38 PM	22	C&P Ex. 51
7/28	Cross (Md. home)	Keeshin (Chicago)	12:14 PM	13	C&P Ex. 52
7/29	Keeshin (River Forest)	Cross (Md. home)	10:48 PM	23	Ill.Bell Ex. 4-M
8/15	Cross (Md. home)	Carpi, VP, Pa. Phila. office	8:38 AM	6	C&P Ex. 60
8/15	Cross (Md. home)	Goldstein (Chgo.home) No. 4-5344	9:46 PM	4	C&P Ex. 58
8/17	Cross (L.D.7202-ICC off., bill Md. home)	Carpi, VP, Pa. Phila. office	9:35 AM	3	C&P Ex. 61
9/9	Keeshin (River Forest)	Cross (Md. home)	10:52 PM	19	Ill.Bell Ex.4-O
9/14	Cross (Md. home)	Keeshin (Su. 7-3358 Railroad Transfer)	6:21 PM	19	C&P Ex. 62
9/15	Cross (Md. home)	Keeshin (Chicago)	5:44 PM	20	C&P Ex. 63
9/16	Cross (Md. home)	Keeshin (Chicago)	6:15 PM	3	C&P Ex. 64

Date	From	To	Time	Duration in Minutes (or Cost)	Deposition Exh.No.
9/18 (Sun.)	Keeshin (River Forest)	Cross (Md. home)	6:34 PM	3	Ill.Bell ex. 4-Q
9/20	Keeshin (River Forest)	NY Or.5-5615 Forgash - office	9:59 AM	3	Ill.Bell Ex. 4-S
9/20	Keeshin (River Forest)	Forgash (NY home)	10:08 AM	6	Ill.Bell Ex. 4-R
10/17	Forgash (from Cross home) -	Bradley charge		$1.20	Forgash Ex. 36
10/23	Forgash	Cross (Jerseyville)		$7.20	Forgash Ex. 6
10/24	Forgash	Cross (Jerseyville)		$2.25	Forgash Ex. 7
10/27	Forgash (Washington)	Cross (Jerseyville)		$6.30	Forgash Ex. 19
10/27	Forgash (NY)	Cross (Jerseyville)		$1.30	Forgash Ex. 19
10/29	Forgash	Cross (Jerseyville)		$2.70	Forgash Ex. 19
11/11	Forgash (from Cross home) -	Charge Bradley		$1.10	Forgash Ex. 36
11/25	Cross (Md. home)	Forgash (NY)	12:56 PM	3	C&P Ex. 82

PLAINTIFF'S EXHIBIT 69 (Continued)

PLAINTIFF'S EXHIBIT 70

21Z1273

CHICAGO, MAY 26, 1955.

HON. HUGH W. CROSS, COMMISSIONER
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.

DEAR HUGH: I SHALL BE IN WASHINGTON TOMORROW (FRIDAY) FOR AAR BOARD MEETING AND IF THE LENGTH OF THE MEETING PERMITS WILL CONTACT YOU. EXPECT TO BE BACK IN CHICAGO SATURDAY AND WILL BE DELIGHTED TO SEE YOU WHEN YOU ARE HERE MAY 31 THROUGH JUNE 2. WARM REGARDS.

WAYNE A. JOHNSTON
PRESIDENT
ILLINOIS CENTRAL RAILROAD

PLAINTIFF'S EXHIBIT 71

Chicago, May 20, 1955

Mr. Trevillion:

Referring to my letters March 22 and January 13 reporting to you action of Subcommittee, Chicago Terminal Lines, involving transfer of passengers and baggage between stations in Chicago.

This Subcommittee met yesterday and we received final proposals from Keeshin and Parmelee Company. Before the Subcommittee makes its recommendation to the General Committee, each representative was to obtain from their executives authority for selecting one of these services on basis of the proposal. It is possible that the Subcommittee will make a majority and minority recommendation.

KEESHIN PROPOSAL assesses adult per capita coupon rate beginning July 1, 1955, for one year of $1.20; for the year beginning July 1, 1956, $1.22; for the year beginning July 1, 1957, $1.23 and the contract to be for a five year period with a escalator clause for the remaining two years on basis of 1¢ for every 5¢ an hour increase in wages. This escalator clause to apply in the reverse in case a decrease in wages is authorized.

These charges will apply for both the transfer of passengers and hand baggage in limousine service or for checked baggage to be handled in trailers to be placed at station baggage room platforms and the transfer of these trailers to be handled by tractors between stations. Both passenger and baggage truck equipment is to be radio controlled and that the transfer service for passengers will be available between the hours of 6:45 AM and 11:00 PM daily. Baggage truck service to be available at intervals of two hours during the period 8:00 AM to 5:00 PM daily.

Mr. Keeshin proposed to purchase Ford air-conditioned station wagons seating seven passengers and also assign sufficient trailers to handle the checked baggage.

PARMELEE COMPANY PROPOSAL. Effective July 1, 1955, Parmelee desires a written agreement for period ending December, 1961. The present charge of $1.22 per adult coupon to be reduced to $1.[illegible] during period July 1, 1955, to June 30, 1956, and effective July 1, 1956, escalator charge would be on basis of 1¢ for each 3¢ per hour increase in wages. Charge would be reduced on same basis if wages were lowered. Maximum charge to the railroads during the period of this agreement would be $1.25 per adult coupon.

Parmelee Company has in mind spending $500,000.00 for the purchase of new equipment over the approximate five year period and will replace within the next eighteen months old passenger equipment not in service with new twelve passenger limousines.

In view of the fact that both of these proposals are about the same and as no serious complaints have been received in connection with the present Parmelee service, it is my recommendation that we record our expression as favoring the continuation of the Parmelee Service. May I have your approval.

Original Signed
G. R. KIMBEL

J.C. 18

PLAINTIFF'S EXHIBIT 72

Mr. Kimbel:

Mr. Bone of the NYC telephoned yesterday afternoon stating that he is calling a meeting of his committee having to do with the transfer of passengers and baggage between stations in Chicago now being handled by the Parmelee Company.

He has information that some railroad presidents have been contacted by transfer companies involving this service. He has in mind having Mr. Keeshin appear before the committee morning of May 19 and have Mr. Markin of the Parmelee Company appear in the afternoon of the 19th. This will be for the purpose of having these gentlemen further explain their proposals covering the transfer service. Meeting will be held in Room 1218, LaSalle Street Station.

Mr. Bone is going to ask Mr. Baird to attend and he understands the B&O will ask Mr. Whittington to attend. He suggested that in view of contacts now being made of the presidents' offices that representation at this meeting should be at the highest passenger traffic level and has asked that you attend.

R. P. S.

4-29-55

PLAINTIFF'S EXHIBIT 73

Chgo Transfer - Phoned these men and results as follows 0 1 2 PM

Mr Bone Nyc - Evanston Rumleof 5-8656

(7) Recommended Keeshin proposal approved by New York office

Mr. Holt - Penna - Fleetwood 2-1995

Keeshin proposal - Phil. ok

Mr Sloan - AT&SF - Euclid 6-3724

Keeshin proposal

Mr Coleman - B&O. Beverly 8-8417

No answer

Stated this afternoon received no advice, Mr. Whittington will attend meeting June 3rd and make decision then.

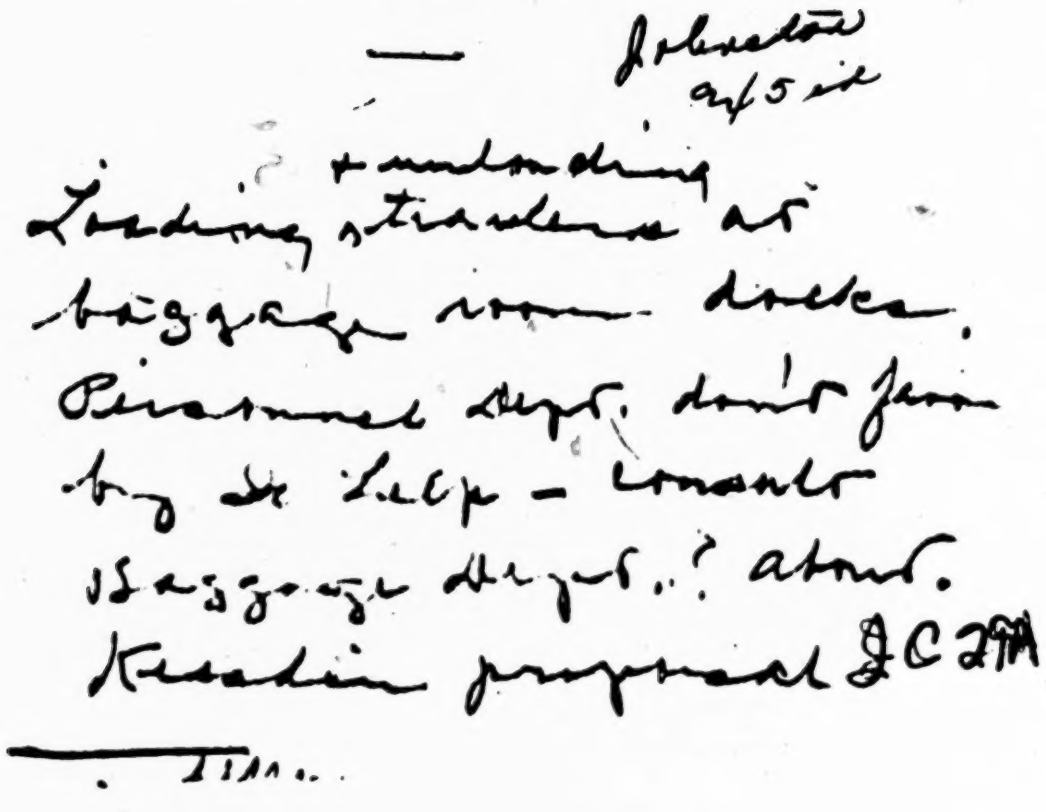
Mr. Quackenbush - C&NW - Wanconda Jackson 6-7335

I.C 28

No advice which proposal they favor. Will attend meeting 6/3 and hope can announce then.

Nyc paid Parmelee		345,000.00 in 1954	
C&NW	"	"	251,000.00 in 1954
IC	"	"	70,000.00 " "

PLAINTIFF'S EXHIBIT 74



PLAINTIFF'S EXHIBIT 75

March 24, 1955

Air Mail

Mr. Morris Markin,
Chairman of the Board,
Parmelee Transportation Co.,
2016 North Pitcher Street,
Kalamazoo 13 F, Michigan.

My dear Morris:

I have read your proposal of March 15th addressed to Mr. Padrick, concerning the transfer service performed by Parmelee Transportation Company at Chicago.

I see no reason why it should not be adopted by the Chicago terminal lines, as it impresses me as being fair and reasonable.

With best wishes.

Sincerely yours,

/s/ F. H. Baird

Envelope: President,
Checker Cab Manuf. Corp.,
2016 North Pitcher Street,
Kalamazoo 13 F, Michigan.

FHB/arh

Alfs Rch Baird 2 for id
W Boyd
3/4/57

PLAINTIFF'S EXHIBIT 76

NEW YORK CENTRAL SYSTEM

Chicago, April 27, 1955

Mr. W. J. Baird:

Regarding transfer arrangements, Chicago, presently performed by Parmelee Transportation Company -

Mr. Perlman has talked with Mr. Fawcett regarding the status of the transfer situation. After a thorough sifting of all companies big enough and capable of doing the transfer job at Chicago, the committee has determined only two are of sufficient importance to be considered,

1 - Incumbent, Parmelee Transportation Company, and
2 - Keeshin Motor Company, Chicago.

Fundamentally, the proposals of these two companies are the same, for example, each desires five year contract with the carriers and each proposal outlines new limousine equipment - in the case of Keeshin he proposes radio equipped, air-conditioned limousines for the transfer of passengers but, as stated above, each proposal is fundamentally the same and covers the transfer of passengers between stations, Chicago, and the transfer of checked baggage.

The Keeshin proposal outlines coupon rates as follows:

$1.20 per coupon for the first year
$1.22 per coupon for the second year
$1.23 per coupon for the third year, and

commencing with the fourth year, the contract would contain an escalator clause on the basis of 1¢ increase in the coupon rate for every 5¢ an hour increase in wages.

The Parmelee proposition provides for $1.20 per coupon for the first year. Commencing with the second year the coupon rate would be dependent upon an escalator clause providing for 1¢ increase per coupon for each 3¢ an hour increase in wages, plus 1¢ increase per coupon for each 1% decrease in the number of passengers transferred between stations - if the number of passengers increased between stations the coupon rate would likewise be decreased 1¢ per coupon. The base period on which the increase or decrease of coupons would be figured would be the period July 1, 1954 to June 30, 1955.

NY 308

PLAINTIFF'S EXHIBIT 76 (Continued)

NEW YORK CENTRAL SYSTEM

Mr. F. H. Baird -2- April 27, 1955

In 1954 the New York Central paid the Parmelee Company $345,160. I do not have the total payment to Parmelee in 1954, but I am showing next the total payments made to Parmelee by the Terminal Lines in the years indicated and the amount of money that the New York Central paid Parmelee in those years:

Year	Total	N.Y.C.
1951	$1,609,136	$367,337
1952	1,621,808	366,559
1953	1,460,846	340,632

In 1950 the adult coupon rate was 85¢ and was increased to $1.00.

In 1952 coupon rate was increased to $1.05

January 1, 1954 - $1.12½

April 1, 1954 - $1.20, and

The present rate since July 1, 1954 is $1.22

When Mr. Perlman discussed the matter with Mr. Fawcett he asked if I could keep the case open and for decision until he would have an opportunity to analyze it - the Parmelee Transportation Company has now concluded that they must have an answer on May 6 inasmuch as their labor contract expires on June 30 they state they must start negotiations immediately (The Keeshin proposal states that his labor contracts have been made for the next three years).

Will you please advise what our position in the case should be in view of the analysis by Mr. Perlman.

S. J. Bono

Copy Mr. D. A. Fawcett

PLAINTIFF'S EXHIBIT 77

NEW YORK CENTRAL SYSTEM

New York, May 20, 1955

MEMORANDUM -

Concerning the negotiations with the Parmalee Transfer Company and the Keeshin Motor Company, covering transfer arrangements at Chicago, Illinois.

The sub-committee which includes representatives of the New York Central, Santa Fe, Baltimore and Ohio, Chicago & North Western, Illinois Central and Pennsylvania Railroad, listened to proposals submitted by Keeshin and by Parmalee Thursday, May 19th.

After hearing the proposals the sub-committee voted to adjourn and reconvene Friday, June 3rd, for the purpose of making recommendations concerning awarding of contract.

In the meantime the sub-committee members will confer with their respective managements and with the other member roads involved in the Transfer arrangements as to the merits of the two propositions offered.

Generally, both Parmalee and Keeshin are very close in their bidding — both propose a rate of $1.20 per coupon for the first year of the contract (this compares with rate of $1.22 presently charged by Parmalee).

Both propose escelator clauses — Keeshin would charge $1.22 per coupon during second year of contract — $1.23 per coupon third year of contract and thereafter would raise the charge per coupon .01¢ for each wage increase of 05¢ an hour awarded to drivers — Parmalee proposes a .01¢ per coupon increase for each .03¢ per hour increase in drivers wages with maximum cost per coupon not to exceed $1.25.

Each of the two companies desires a five year contract, each proposes to provide new limousine equipment, each proposes full coverage of transfer requirements of passengers and checked baggage between stations in Chicago.

In 1954, the New York Central paid the Parmalee Company $345,160; the totals paid Parmalee by the Terminal Lines, Chicago and the amounts paid by the New York Central as its proportion for the three years prior to 1954 follow:

Plaintiffs Exhibit / Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division No. BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

56 C 3, V3

PLAINTIFF'S EXHIBIT 77 (Continued)

YEAR	TOTAL	NEW YORK CENTRAL
1951	$1,609,136	$367,337
1952	1,621,808	366,559
1953	1,460,846	340,632

In opening this contract to competitive bidding it is the feeling of the Chicago Terminal Lines that a much better deal will result than would otherwise be possible.

F. H. Baird

PLAINTIFF'S EXHIBIT 78

NEW YORK CENTRAL SYSTEM

New York, May 26, 1955

Memorandum for Mr. E. C. Nickerson:

Referring to the Chicago transfer situation and the negotiations being progressed in connection therewith:-

I quote letter from Mr. Bone, dated May 24th:

"I am genuinely impressed with the Keeshin proposition, and particularly his attitude.

I feel, were it not for the proposal submitted by Mr. Keeshin, that the Parmelee Company would be asking for a rate per coupon several cents higher than we are today paying.

I feel that the Parmelee Company could have been more alert in finding means to reduce their expenses, enabling a lower coupon rate, instead of holding out for different plans which would, in effect, guarantee Parmelee an increased rate when railroad traffic is declining.

The Keeshin proposal to replace equipment every thirty months is quite necessary, and it was given in a clear cut manner - and the equipment, being radio dispatched and air-conditioned, is to the advantage of the carriers.

I am confident that Mr. Keeshin can do the job better and I, therefore, recommend that the Keeshin Company be given the contract on the basis of his proposition."

I agree with Mr. Bone's conclusions and recommend that we be given authority to proceed accordingly. We must be sure, of course, that an enforceable contract is negotiated with Keeshin and that same will guarantee continuity of service by Keeshin, or his successors, in the event the Keeshin Company decides to dispose of the business at some later date. The matter of settlements should also be plainly stated, the Railroads involved in the contract settling on the basis of coupons presented and on which service has been performed.

Please advise.

F. J. Lund

N 134

PLAINTIFF'S EXHIBIT 79

NEW YORK CENTRAL SYSTEM

New York, May 31st 1955

Mr. E. W. Bone:

Referring to the Chicago transfer situation and negotiations being progressed in connection therewith.

You have copy of my memorandum to Mr. Nickerson dated May 26th, recommending that the Keeshin Company be given the contract for the transfer work at Chicago.

Mr. Nickerson has approved this recommendation and the matter may therefore be progressed accordingly.

The provisions outlined in the last paragraph of my letter of the 26th, are necessary and the contract, if finally awarded Keeshin, should be clear with respect to each provision.

F. [illegible]

NYCJ7

PLAINTIFF'S EXHIBIT 81

Supplement to C.R.I.&P.R.R. Co. Secretary's No. 12717

August 10, 1955

Parmelee Transportation Company
300 N. Desplaines St.
Chicago, Ill.

Yellow Cab Company
1730 S. Indiana Ave.
Chicago, Ill.

Checker Taxi Company
1401 W. Jackson Blvd.
Chicago, Ill.

Plaintiffs Exhibit | Defendants Exhibit | ( ) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division No. | BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

Gentlemen:

Referring to Letter Form of Agreement, dated December 30, 1942, between The New York Central Railroad Company, The Chicago, Rock Island and Pacific Railway Company, Parmelee Transportation Company, Yellow Cab Company and Checker Taxi Company, providing for operation of Parmelee buses and Yellow and Checker cabs in the so-called "Taxi-Court" at LaSalle Street Station, Chicago, Illinois:

In line with the recent decision of Chicago Terminal Lines to terminate the services of the Parmelee Transportation Company, please consider this notification as formally canceling the above Letter Form of Agreement dated December 30, 1942, effective Midnight, September 30, 1955.

May we take this opportunity of expressing to the Parmelee Transportation Company, whose services and association we have enjoyed for so many years at LaSalle Street Station, our respect for the organization and its historical affiliation with the railroad transportation industry in Chicago.

Your acknowledgment will be appreciated.

Yours very truly,

THE NEW YORK CENTRAL RAILROAD COMPANY

By L. A. Fawcett
President Vice President

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

By [signature]
Vice President

ATTEST:

[signature]
Secretary

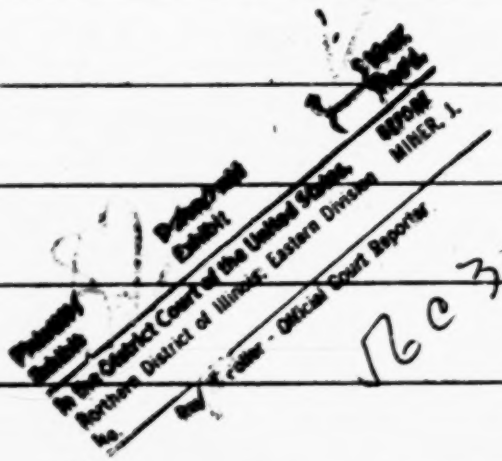
[signature]

PLAINTIFF'S EXHIBIT 82

1/5

Case for meeting my
Ofc made 12/15 —

Plaintiff's Exhibit
Defendant's Exhibit
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Reg. Feller - Official Court Reporter
Stamp Rec'd.
REPORT MINER, J.



RC 373

NY121

PLAINTIFF'S EXHIBIT 82 (Continued)

9/5/55 lc contacted ayer
& Chyo Tunnell
told deadline 12/1/54
no response

PRR contacted Willett
<Wyer> - no response.
Wyer suggested to EBP
that Separate Co be
formed & RR take
the stock - no good

NY
122

PLAINTIFF'S EXHIBIT 82 (Continued)

1/5/55

EBP has asked Parmelee to ~~[illegible]~~ offer us their suggestion to improve Exc d terms chgs —

JL Keeshin proposal at $1.20 is not supp to change from Parmelee

1. Rel to be worse off a/c Ldg Trailers

Rate of 1.10 would attractive

Rest made to EBP in letter of 1/5

PLAINTIFF'S EXHIBIT 82 (Continued)

2/23 930a Rm 1218
OK Emily Kelly

new contract
Sgd 1/55
10th Inc 1955
8¢ " " 1956
8¢ " " 1957

Baggage { RR Lond? see minutes
Trailer? " "

What was the nbr of pages tfd
that caused you to name a $1.10 rate.
see minutes

NY 124

PLAINTIFF'S EXHIBIT 82 (Continued)

7/23

Mr Willett Jr:

Ckd Baggage -

Fisher Un Sta -

1. Trailers

Nbr of trips - ~~30~~ 4 Trips

Nbr of Trucks - 6 Trucks -

Who would load - Willett would load

Claims - would participate

Main ofc located 3 Blks from

Un Sta & extra trailers are

available.

Have observed Bage Tfr - yes

Tfr of Space to Space - In contact

Same price as now getting $4/25

PLAINTIFF'S EXHIBIT 82 (Continued)

7/23 Howard Willett:

Prsgr Equipts –

– Luggage in Car

with prsgr

122 ad
61 1/2
85 Fm
5 06 Mins
24 Mn

Same price as now getting –

6 & 10 prsgr Equipts

Cost to operate 1 Bus

10 · 21 ~~10~~

Nbr of Buses to Cover – ~~40~~

6 · 21 ~~20~~

75 Buses that operate for

Schools – Hrs 50 Bus

Would provide Prsgr Agts

[illegible]

NY 126

PLAINTIFF'S EXHIBIT 82 (Continued)

Mr Howard Willett

— Prop -

— Breaking point on which rate is made — ??

— RR Form a Co — (no)!!

— Would be willing to keep rate for 1 year -

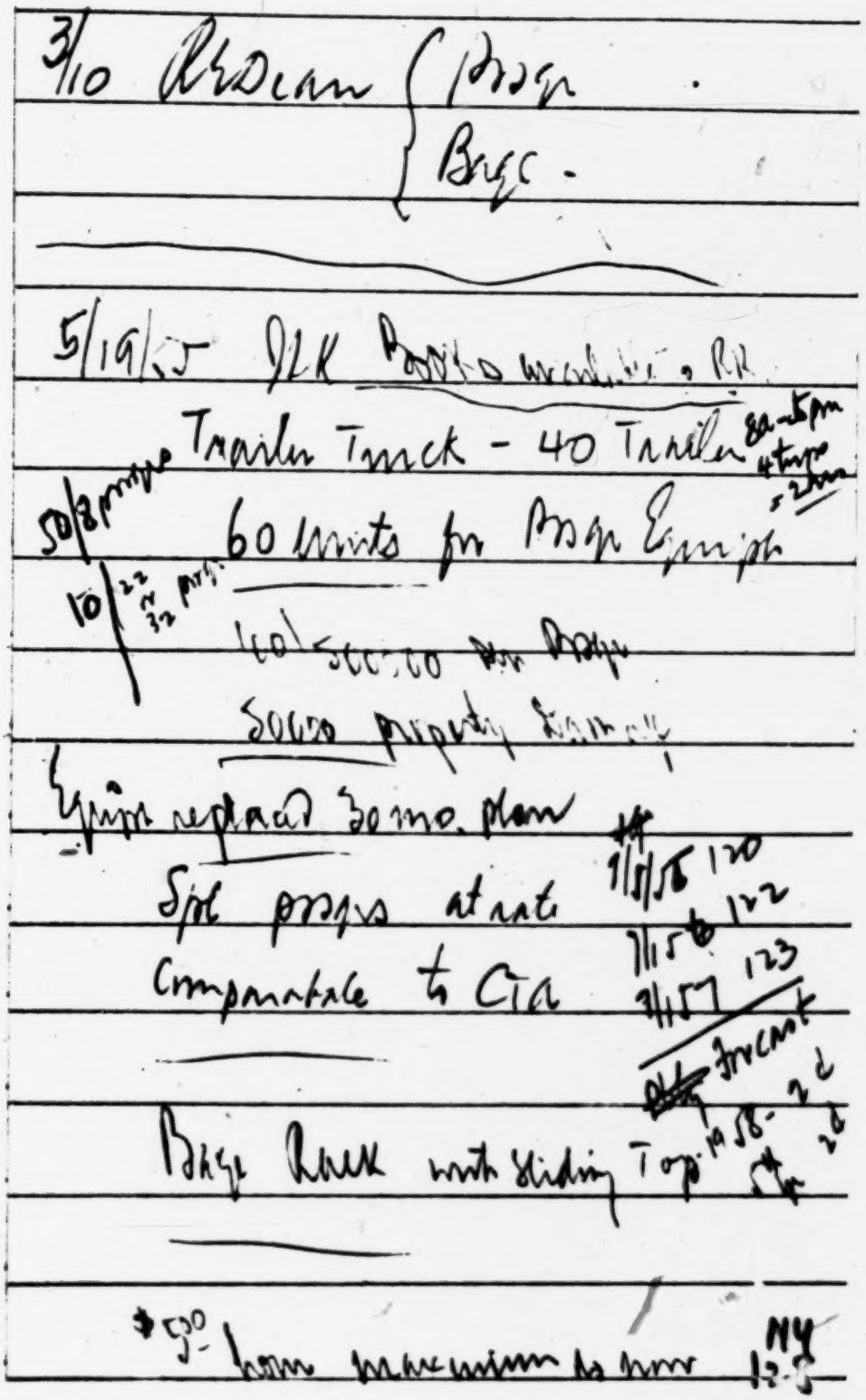
— for 2nd year ~~[illegible]~~ ~~[illegible]~~ → escalator clause with ceiling

— 5 yr Contract

— Willett Motor Coach will operate

MY127

PLAINTIFF'S EXHIBIT 82 (Continued)



PLAINTIFF'S EXHIBIT 82 (Continued)

5/10 .3

Can have [illegible] Equipt in 90 ways

no problem with CKd Barge

In case of Emergency Can throw in sufficient [illegible] Equipt.

NY129

Contd on next page

PLAINTIFF'S EXHIBIT 82 (Continued)

1/19/55

Pannelee Transport Sys

~~? Maybe 15d in 3 yrs about~~

~~5d year – 120 to 125 .. = 1d to 3d Inc~~

Ceiling

July, [illegible] 120 [illegible] #2 pp2

July 1, 1956 125 thru Dec 1961

$500,000 Larger Trucks { Replace Trucks

85 [illegible]

20 x [illegible] passengers 30 add'l to replace 7

65 x 7 passengers

NY 130

no a/c within 18 mo

Pmto

PLAINTIFF'S EXHIBIT 82 (Continued)

5/19/57

Parmelee Tr

Pty Groups 50¢

~~Assurance of disruption~~

[redacted]

· Fri Sept Com June 3rd x E.B.P.

[redacted]

NY131

PLAINTIFF'S EXHIBIT 82 (Continued)

~~440P~~

~~120~~ Parmelee Kazoo

Bg 7/1/55	1st	120	Maximum
7/1/56	2	122	
7/1/57	3	123	
7/1/58	4	124	
7/1/59	5	125	
7/1/60	6	125	

131 A

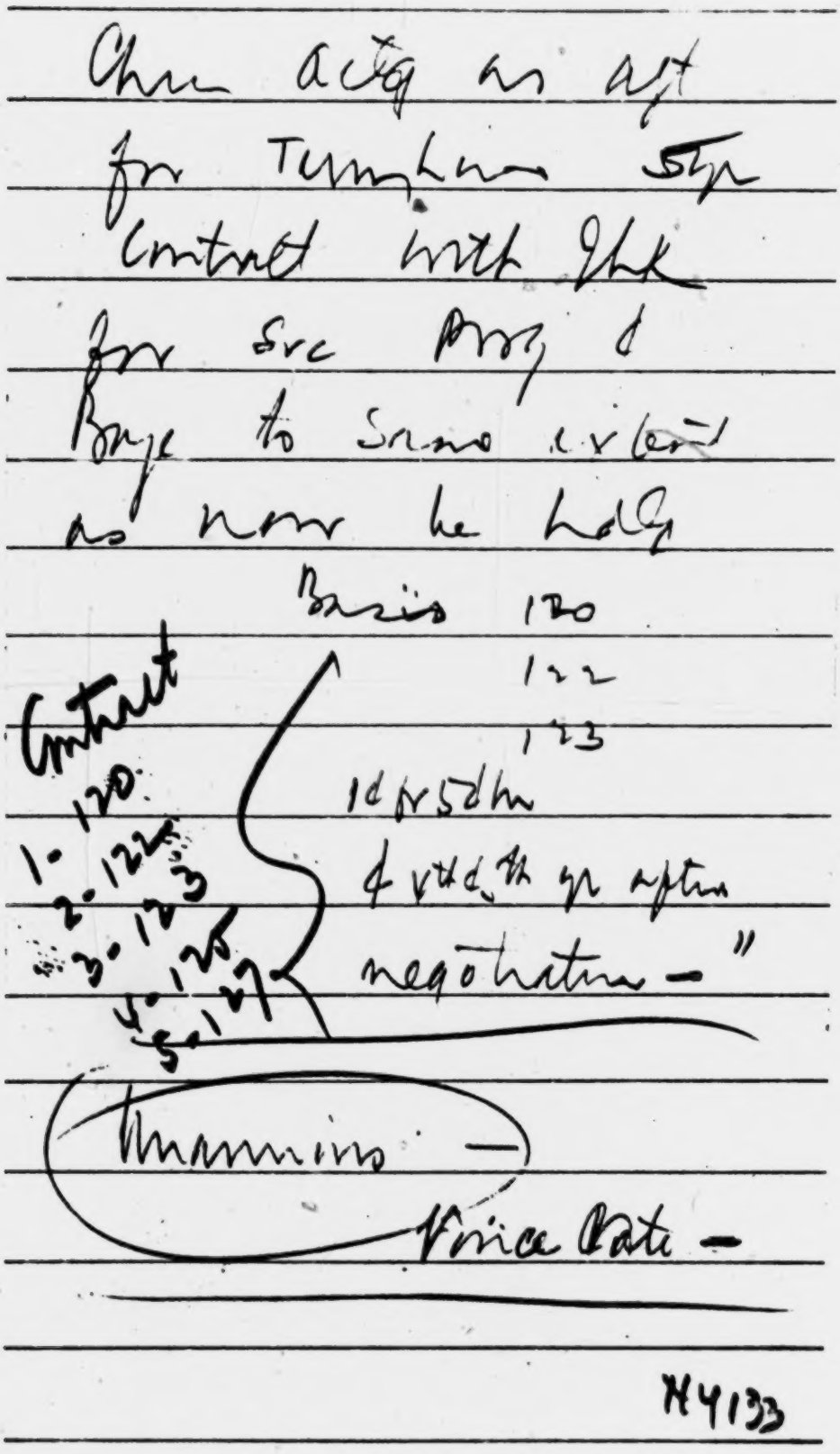
PLAINTIFF'S EXHIBIT 82 (Continued)

6/13 Erie Contract
with Parm - made
1915 - 60 cancellation
Clause <also NKD>

10/1/55

"Chairman's inf ~~DTC~~ Parm
Cancel of all arrangements
of Pres & Bay, bet
Str Chgo eff 90 days
that in ev Contract
of Svc NWR Scrapage an
auto be cld on ex his
notice - & arr be
made by Contract N4132

PLAINTIFF'S EXHIBIT 82 (Continued)



H4133

PLAINTIFF'S EXHIBIT 82 (Continued)

Sub Com to be Kept [illegible]
to compile termination
report - & Engage [illegible]

Railroad Transfer [illegible]

Retentivation of Pacific Company
L. & Ft T#3 [illegible]
ICC# 302

Shore Pacific Transfer Co.

Lt Blue & White

Sub. Comm. [illegible] to choose name & color -

N4137

PLAINTIFF'S EXHIBIT 83

143.

FILE F. R. M.

Mr. Baird -

Mr. Bone called to advise that Messrs. Comer and Whittington will be on hand in Chicago re the Chicago transfer situation on Thursday, May 19th.

I advised him you would not be there.

arh - 5/17

advised FHB. 5/18

Plfs. Exh Baird 4 for id.
[illegible] 3/14/57

XI/3

PLAINTIFF'S EXHIBIT 84

6C
3 of 3

NEW YORK CENTRAL SYSTEM

Chicago, May 19, 1955

Mr. F. H. Baird:

Today, the sub-committee of the Chicago Terminal Lines, composed of the following members

C.E.Quackenbush, G.P.A., C.& N.W., Chicago
S.F.G.Nelson, A.G.P.A., B.& O., Chicago
J.L.Sloan, A.G.P.A., A.T.& S.F., Chicago
E.M.Holt, G.P.A., Pennsylvania, Chicago
R.P.Smart, A.G.P.A., I.C., Chicago
and the undersigned as Chairman

augmented by the following officials

E.B.Padrick, Chairman, Trans-Cont.-Western Passenger Ass'n
E.R.Comer, PTM, Pennsylvania, Philadelphia
J.F.Whittington, G.P.T.M., B.& O., Baltimore
R.E.Coleman, P.T.M., B.& O., Chicago
J.R.Brennan, P.T.M., C.& N.W., Chicago

met with Messrs. Keeshin and Markin and reviewed their proposals in the Chicago transfer situation.

Mr. Keeshin conferred with the committee at 10:00 A.M. today and reiterated his position to be on the following coupon rates:

1st year - $1.20
2nd year - 1.22
3rd year - 1.23

and the fourth years on the basis of an escalator clause, being an increase of 1¢ per coupon for every 5¢ an hour drivers' wages were increased.

Mr. Keeshin's proposal is on a five year basis through December 1961 and he assured the committee that he is prepared to purchase 60 units of passenger equipment of the station wagon air-conditioned type (50 units of 8-passenger capacity and 10 units either 22 or 32 capacity) plus 40 trailer trucks to handle checked baggage. The equipment to be replaced under a 30 month replacement plan.

The equipment which Mr. Keeshin proposes would have luggage racks on the top of the station wagons for the handling of luggage which passengers would carry with them in the transfer between stations - this luggage rack would be constructed by unique design

PLAINTIFF'S EXHIBIT 84 (Continued)

NEW YORK CENTRAL SYSTEM

providing for a sliding top which would protect, he says, the luggage in the case of inclement weather.

Mr. Keeshin also proposed to augment the present two trips a day between Chicago stations for the handling of checked baggage to four trips a day.

Mr. Keeshin did not care to forecase the coupon rate beginning with the fourth year, inasmuch as it is of some conjecture what labor conditions would be at that time but he did not anticipate the hourly rate of drivers to increase beyond 10¢ an hour in the fourth year or 10¢ an hour in the fifth year.

Mr. Keeshin stated that he could have passenger equipment within 90 days to place in limousine service, and he had sufficient equipment to handle the checked baggage - also Mr. Keeshin stated that in the case of an emergency he could make arrangements for sufficient equipment to commense the limousine transfer almost immediately.

Mr. Markin, Chairman of the Board of the Parmelee Transportation Company, conferred with the committee at 2:00 o'clock this afternoon and reiterated a portion of his previous proposition, as follows:

1st year - coupon rate to be $1.20, and, beginning with the second year, an adjustment of the coupon rate of 1¢ for each increase or decrease of 3¢ per hour in wages of the driver employes and continuing until the expiration of the contract, but the coppon rate through December 1961 would not exceed $1.25.

Mr. Markin's proposition is on a five year contract, through December 1961, and he reiterated his prior proposition to replace trucks for the handling of checked baggage and to replace the present 85 limousines (20 12-passenger and 65 7-passenger) by the purchase of thirty additional 12-passenger capacity limousines to replace some of the seven-passenger limousines. Mr. Markin stated that this would require an expenditure of approximately $500,000 over a period up to eighteen months. Mr. Markin stated that he did not consider air-conditioned equipment to be practical in the limousine transfer.

Mr. Markin's limousines would have space for the luggage which passengers take with them in limousines in a compartment in

PLAINTIFF'S EXHIBIT 84 (Continued)

NEW YORK CENTRAL SYSTEM

the body of the limousine accessible through the rear compartment, from the outside.

Mr. Markin stated that he considers the two trips per day of checked baggage between stations to be adequate, which position is confirmed by the Managers of our respective Baggage Rooms at the different Chicago Terminals.

Briefing these two proposals, the Keeshin proposal could (although a matter of conjecture) reach a rate of $1.27 a coupon in the fifth and expiring year of the contract, whereas the Parmelee Transportation Company proposal provides a positive ceiling of $1.25 through the fifth year of the contract - however it could well be that the Parmelee proposal would reach the maximum of $1.25 in its second year (depending upon what Parmelee is able to negotiate with its drivers) whereas the Keeshin proposal (labor contract having been negotiated by Mr. Keeshin) provides maximum of

$1.22 in the second year
1.23 in the third year.

The members of the sub-committee have designated Friday, June 3, as the next date that the sub-committee will meet to compile the sub-committee's recommendation to the general committee composed of all Chicago lines. I trust that this date (June 3) will be sufficient time for you to analyze these two proposals and let me have the position of our company. I should add that other members of the sub-committee are likewise submitting the detail of today's conferences to their officers for a similar analysis and judgment.

S. W. Bone

Copy Mr. D. A. Fawcett.

PLAINTIFF'S EXHIBIT 85

NEW YORK CENTRAL SYSTEM

Chicago, May 20, 1955

Mr. F. H. Baird:

Supplementing my letter of May 19 in regard to the Chicago transfer situation -

At 4:40 this afternoon Mr. Morris Markin telephoned me from Kalamazoo and stated that he wanted to revise his proposition in regard to the Chicago transfer situation as follows:

"Base rate established July 1, 1955 - $1.20 and there shall be increase of 1¢ for each 3¢ in cost of labor, the maximum rates under this formula are as follows:

July 1, 1955	$1.20
July 1, 1956	1.22
July 1, 1957	1.23
July 1, 1958	1.24
July 1, 1959 to the end of the contract, July 1960 - $1.25"	

I understood from Mr. Markin that he intends to confirm his telephone conversation by letter.

S.W. Bone

Copy Mr. D.A. Fawcett

PLF EXH BAIRD 7 for ID
2 Bond

PLAINTIFF'S EXHIBIT 86

NEW YORK CENTRAL SYSTEM

Chicago, May 23, 1955

Mr. J. A. Whited
Assistant to the President
New York, New York

Dear Jack:

Pursuant to your request, I am attaching hereto copy of my letter of May 20 addressed to Mr. Baird, with a copy to Mr. Fawcett, regarding the Chicago transfer situation.

Sidney

Enclosure

Plaintiff's Exhibit | Defendant's Exhibit | Ident. Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, I
No.
Roy E. Fuller - Official Court Reporter

N6 C 3 V3

Whited 2 forward

Plfs Exh Whited 2 forward
1 Box

PLAINTIFF'S EXHIBIT 86 (Continued)

NEW YORK CENTRAL SYSTEM

C O P Y

Chicago, May 20, 1955

Mr. F. H. Baird:

Supplementing my letter of May 19 in regard to the Chicago transfer situation -

At 4:40 this afternoon Mr. Morris Markin telephoned me from Kalamazoo and stated that he wanted to revise his proposition in regard to the Chicago transfer situation as follows:

"Base rate established July 1, 1955 - $1.20 and there shall be increase of 1¢ for each 3¢ in cost of labor, the maximum rates under this formula are as follows:

July 1, 1955	$1.20
July 1, 1956	1.22
July 1, 1957	1.23
July 1, 1958	1.24
July 1, 1959 to the end of the contract, July 1960	$1.25"

I understand from Mr. Markin that he intends to confirm his telephone conversation by letter.

S. W. Bone

Copy Mr. D. A. Fawcett

Ayd 17

PLAINTIFF'S EXHIBIT 87

Chicago, May 23, 1955

Mr. T. E. Norland:

I am returning papers bearing your pencilled memorandum regarding use of C.T.A. buses to transfer groups between terminals, Chicago, when such groups hold party tickets reading to and from Chicago -

I am now advised that the Parmelee Transportation Company will handle such group movements at the rate of 50¢ per capita.

S.W.Bems

Enclosures

PLAINTIFF'S EXHIBIT 87a

1-C

NEW YORK CENTRAL SYSTEM

N.Y.C. SYSTEM
26 1955
P. T. M. CHICAGO

Chicago, May 25, 1955

Messrs: E. E. Pierce
I. G. Raap
R. R. Spangenberg
A. A. [illegible]
T. R. [illegible]
H. N. [illegible]
C. Fendrych

JBI says to Disregard 4PM 6/28/55

The use of CTA buses to transfer groups between stations in Chicago seems to be popular. At times this method is used without reference being made to such means of transfer in the transportation notice and it may result in duplicate service; namely, Parmelee Company who do most of the transfer service and who I believe receive copies of transportation notices, also providing buses.

This matter was reported to Mr. Bone and I now have his letter of May 23 reading:

"I am returning papers bearing your pencilled memorandum regarding use of C.T.A. buses to transfer groups between terminals, Chicago, when such groups hold party tickets reading to and from Chicago -

"I am now advised that the Parmelee Transportation Company will handle such group movements at the rate of 50¢ per capita."

This letter is for your information; in future will you please specify in all transportation notices what method of service is desired in Chicago between stations and whether these arrangements were made direct; our Passenger Representative or Depot man who meets special groups should know in advance the exact services desired.

T. E. Kerland,
G.P.A.

B-4
Cys-S.W.Bone
H.O.Gillis

NYC40

(Printed in U. S. A.)

PLAINTIFF'S EXHIBIT 88

NEW YORK CENTRAL SYSTEM

Plaintiff's Exhibit 88 Defendants Exhibit ( )Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

Chicago, May 24, 1955

Mr. F. H. Baird:

Confirming our telephone conversation of even date, regarding the Chicago transfer situation -

I am genuinely impressed with the Keeshin proposition, and particularly his attitude.

I feel, were it not for the proposal submitted by Mr. Keeshin, that the Parmelee Company would be asking for a rate per coupon several cents higher than we are today paying.

I feel that the Parmelee Company could have been more alert in finding means to reduce their expenses, enabling a lower coupon rate, instead of holding out for different plans which would, in effect, guarantee Parmelee an increased rate when railroad traffic is declining.

The Keeshin proposal to replace equipment every thirty months is quite necessary, and it was given in a clear cut manner - and the equipment, being radio dispatched and air-conditioned, is to the advantage of the carriers.

I am confident that Mr. Keeshin can do the job better and I, therefore, recommend that the Keeshin Company be given the contract on the basis of his proposition.

S. W. Bone

Copy Mr. D. A. Fawcett

PLF EXH BAIRD 3/31/61

PLAINTIFF'S EXHIBIT 89

At Washington, October 6, 1955
141c A

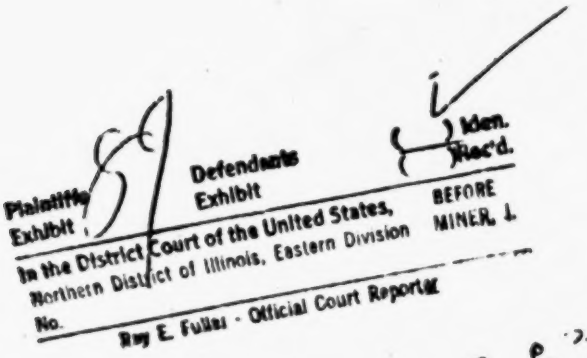
Mr. Symes:

Chairman Cross asked me to meet with him today to discuss the dirty car situation. There were also present Commissioners Johnson, Clark and Freas, as well as Mr. Taylor, of the Car Service Division.

After thoroughly reviewing the problem of policing, etc., it was agreed that the Commission would get out a notice urging the consignees to thoroughly clean the cars. The notice will also state that unless there is reasonable compliance, the Commission will recommend to Congress that punitive legislation be enacted. The issuance of this notice will be timed so as to be available at the annual meeting of the National Association of Advisory Boards that is to be held at Pittsburgh.

F. C.

cc: J.P.N.



Plaintiffs Exhibit 89 Defendants Exhibit ( ) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
No.
Ray E. Fuller - Official Court Reporter

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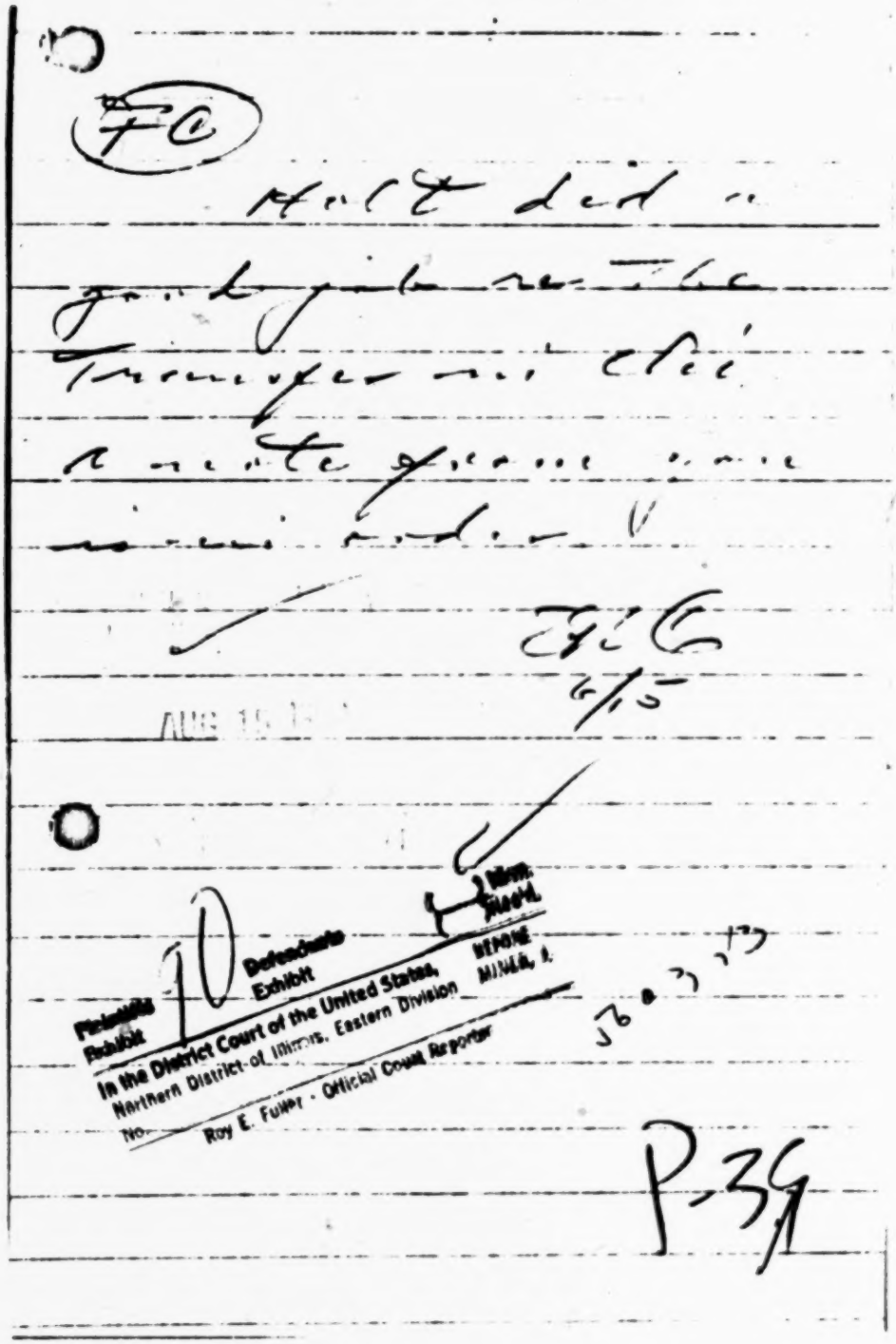
PLAINTIFF'S EXHIBIT 90



PLAINTIFF'S EXHIBIT 91

File

Philadelphia, June 16, 1955
File A

PENNSYLVANIA RAILROAD
JUN 16 1955

Mr. E. M. Holt.

Dear Ellsworth -

It is quite obvious that you have done an outstanding job in connection with the new transfer arrangements at Chicago, for which I should like to extend my sincere thanks and congratulations.

Fred Carpi

cc: [illegible]

Plaintiff's Exhibit
In the United States District Court of the United States, Northern District of Illinois, Eastern Division
No.
BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

Rec 3-23

PLAINTIFF'S EXHIBIT 92

Meeting of Chicago Terminal Lines - June 13, 1955.

Philadelphia, Pa., June 7, 1955
B

E. M. H.

Will you please attend the above meeting and let me have a prompt report thereon in duplicate.

I am especially interested in items Nos. 1, 7 and 9 and will appreciate full details on those matters.

E. R. C.

Plaintiffs Exhibit 92 Defendants Exhibit
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Ray E. Fuller - Official Court Reporter
BEFORE MINER J.

JUN 8 1955

P. 6

PLAINTIFF'S EXHIBIT 92 (Continued)

TRUNK LINE-CENTRAL PASSENGER COMMITTEE
WESTERN PASSENGER ASSOCIATION

June 3, 1955

CALL FOR MEETING,
CHICAGO TERMINAL LINES
Room 336, Union Station, Chicago
MONDAY - JUNE 13, 1955
10:30 AM (DST)

Messrs:

J J Alms	R E Coleman	P G Nagle
2-T S Amis	E R Comer	2-T E Nerland
A N Anderson	H G Gillis	2-R W Ohlman
2-R T Anderson	W R Godley	A G Oldenquist
F H Baird	E E Gordon	E E Pierce
J A Barrett	H E Hay	H Sengstacken
R F Berndt	E M Holt	Geo F Sherman
3-J L Bickley	R E Jamieson	R R Spangenberg
2-S W Bono	2-G R Kimbel	R E Towns
3-J R Brennan	G G Kottenstette	2-R B Weaver
3-I C Bruce	2-T E LeSueur	R G Woods

(Chicago Terminal Lines)

Gentlemen:

Upon request, meeting of Chicago terminal lines is hereby called for the time and place indicated in the heading hereof, to consider the following questions:

1. TRANSFER OF PASSENGERS AND BAGGAGE BETWEEN STATIONS IN CHICAGO

2. OPENING OF A "WILL CALL" CHICAGO RAILWAYS' HOTEL TICKET OFFICE IN THE PRUDENTIAL BUILDING; ALSO QUESTION OF TICKET OFFICE LOCATED IN MORRISON HOTEL AND THE PRESENT "WILL CALL" OFFICE IN THE LAKE VIEW BUILDING arrg mgrs Authorized Officers

3. DISPOSITION OF SHORTAGES IN HOTEL TICKET OFFICE ACCOUNTS Absence of acctg forms

4. RAIL-AIR-BUS EDUCATIONAL FIELD TRIPS OF TEACHERS ATTENDING THE NATIONAL COUNCIL FOR EDUCATIONAL TRAVEL SESSION IN CONNECTION WITH THE NATIONAL EDUCATION ASSOCIATION CONVENTION IN CHICAGO, JULY 7, 1955

5. PLACING OF RAILROAD AND PULLMAN TICKETS IN TRAFFIC DEPARTMENTS OF COMMERCIAL ORGANIZATIONS

PLAINTIFF'S EXHIBIT 92 (Continued)

// 6. PROPOSED AUTOMATIC TELETYPEWRITER SYSTEM FOR INTERLINE RESERVATION TRAFFIC IN CHICAGO

7. SWITCHING TROOP TRAINS THROUGH CHICAGO

8. TAXICAB SERVICE AT THE ENGLEWOOD STATION

9. TRANSFER ARRANGEMENTS IN CHICAGO--Transfer charge to be added in connection with all through tickets where transfer is necessary

In view of the extreme importance of the subjects indicated above, and particularly Subject 1, it is urgently requested that you be personally present or authoritatively represented.

Yours truly,

E P PADRICK

A J WINKLER

Copy to Messrs:

J J Nolan
A J Winkler

List P-7
150-W

PLAINTIFF'S EXHIBIT 93

Northern District of Illinois
No.
Roy E. Fuller, Official Court Reporter

Holt Ex 2

Meeting of Chicago Terminal Lines - June 13, 1950.

Chicago, Illinois, June 14, 1950
Item 1

Referring to your D of June 7 relative the attached:

We reported to you by telephone yesterday that effective with the close of business September 30, the Chicago Terminal Railroads will no longer require the services of the Parmelee Transportation Company and effective October 1, a new Company, name not yet decided, headed by J. [illegible] Loeshin, will be given a [illegible] year contract to handle the transfer of passengers and baggage and other services presently provided by the Parmelee Company. Wherever the Parmelee name appears on tickets, timetables and tariffs, it should be changed prior to October 1 and it is suggested that we merely use the phrase, "Railroad Transfer Service", which would then be good for any Company operating.

Item 2. Approval was given to move the present Hotel Ticket Office from the Lakeview Building to the new Prudential Building effective January 1, 1950.

Item 3. Terminal Lines approved recommendation of Accounting Committee.

Item 4. Left to discretion of individual lines.

Item 5. The Chairman of the Chicago Terminal Lines is to explore ways and means of accomplishing for large industries that may have sufficient business to warrant placing tickets in their offices.

Item 6. Continued on the docket for further study.

Item 7. The Chairman advised that there had been some criticism and delays in switching of troop trains through Chicago and he urged that each railroad handle with their Operating Department to see that [illegible] means the switching time allotted and the schedules be adhered to. The Chairman indicated that in the coming operation Gyroscope, it was highly important that the exact time of trains through Chicago, the exact operating schedules and arrival at destination be on schedule, for if this

PLAINTIFF'S EXHIBIT 93 (Continued)

[illegible] is successful, the railroads may be favored with [illegible] if not successful, our chances of securing [illegible] claim. He further advised the individual railroads that on [illegible] failures through Chicago, his office would immediately notify the traffic officers of the railroad involved for individual handling and instruction.

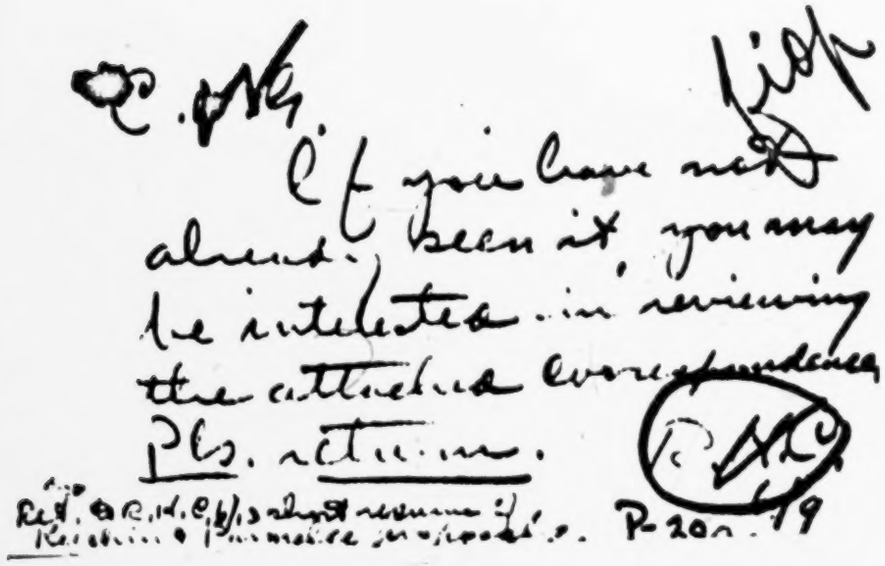
Item . Rock Island Railroad to handle with the [illegible] to provide proper taxicab service at Englewood Union Station.

Item . Continued on the docket by motion of one of the lines without any discussion whatsoever.

L. L. H.

cc:
W.L.H.
G.H.V.
C.B.P.
J.R.D.

PLAINTIFF'S EXHIBIT 94



PLAINTIFF'S EXHIBIT 95

Bone, Holt, Nelson, Quackenbush, Sloan written 3/22-55

Parmelee Transportation Company
[illegible] North Dearborn Street
Chicago 6, Ill.

Warren Martin
Chairman of the Board

March 15, 1955

Mr. E. B. Padrick, Chairman
Trans Continental Passenger Association
Union Station
Chicago 6, Illinois

Dear Mr. Padrick:

You will recall that towards the end of 1954 we were advised by you that a committee had been appointed by the railroads to explore the possibility of securing a lower rate for the services then and presently performed by Parmelee Transportation Company, and that they had offered the following suggestions:

1. That a study be made of the possibility of operating a fleet of tractors and trailers for the transfer of baggage between railroads.

2. That for passengers and hand baggage, a 20-minute schedule between railroads might be possible.

3. That we review our present operation to determine if any savings in cost could be accomplished which would thereby reduce the cost of the transfer service.

We have made an exhaustive study of these suggestions and have come to the following conclusions:

1. Regarding the operation of a fleet of tractor-trailers for transfer of baggage:

   a. The loading and unloading facilities at the depots are not adequate to accommodate the many trailers which would be required to perform this baggage service as the trailers would stand idle to await being loaded from time to time by the railroad baggage men until pick-up time.

   b. The railroad baggage employees would be required to load and unload the trailers, and we found that this kind of work is not being done presently at all depots and it is doubtful if the employees not now doing this kind of work could be required to do it without additional compensation and sanction from their Union.

PLAINTIFF'S EXHIBIT 95 (Continued)

Parmelee Transportation Company
300 South Dearborn Street
Chicago 6, Ill.

Morris Machin
Chairman of the Board

Mr. Padrick - continued

c. The initial investment required for the changeover from the type of equipment which we are presently using to trailers, which would be used solely for storage between pick-ups, could not be justified.

d. The driver manpower savings which could be effected by a tractor-trailer operation would be offset by the additional cost of loading and unloading of the baggage by the railroads because a tractor driver is not permitted by the Union to help load or unload.

e. The quality of service would be impaired because all of the railroads would not receive equal service.

2. Referring to the second suggestion, in order to meet a fixed schedule and to provide a better service, it would be necessary for the railroads to coordinate train arrivals and departures, and, as you know, this could not be accomplished due to conditions beyond the railroads' control. Without such coordination, a fixed schedule would destroy the flexibility of the service to the detriment of the passengers.

On February 4, 1955, we were advised by you to abandon the first two ideas and concentrate our efforts on the third suggestion regarding the possibility of a reduction in the price of coupons through economies to be obtained without any impairment of our present service, and this has been given a great deal of study.

It has always been the Parmelee Company's desire to keep the cost of the transfer service as low as possible under the present form of operation. Some reduction in the present rate of fare could be accomplished only through the purchase of new and larger equipment for transporting both passengers and baggage and with the cooperation of the railroads in the method of handling the baggage. Such undertaking will require the expenditure of approximately $500,000.00 over a period of from six months to a year, and we can only make this expenditure if we have a commitment from the railroads that we will be allowed to amortize it to December 31, 1961.

PLAINTIFF'S EXHIBIT 95 (Continued)

Parmelee Transportation Company
300 South Dearborn Street
Chicago 6, Ill.

Warren Parker
Chairman of the Board

-3-

1.20
1.25

Mr. Padrick - continued

We are prepared to make this investment and furnish the kind of service that the railroads and their passengers are accustomed to and, in that connection, we propose for your consideration the following.

1. That the railroads, by written agreement, will continue with our services until December, 1961.

2. That commencing with July 1, 1956, an adjustment of the coupon of one cent (1¢) for each increase or decrease of three cents (3¢) per hour in wages of the driver employees and that such adjustments shall continue yearly thereafter until the expiration of this contract.

3. That commencing with July 1, 1956, and yearly thereafter on July 1, the price of the coupon will be increased one cent (1¢) for each one per cent (1%) decrease in the number of coupons received by Parmelee during the base period, and the price of the coupon will be decreased one cent (1¢) for each one per cent (1%) increase in the number of coupons received by Parmelee during the base period.

4. That the basis for such computation should be established by the number of coupons received during the calendar year of 1955. In computing the total number of coupons the full fares shall be computed as one, the half fares computed as one-half and the furloughees shall be computed eighty-five one hundred twentieths.

5. That the baggage at all depots which is to be transferred by Parmelee shall be sorted and manifested by the railroads in triplicate.

6. That Parmelee will assume any increases in cost of labor between July 1, 1955 and June 30, 1956.

7. That Parmelee will assume any loss of revenue through the reduction in the number of coupons received between July 1, 1955 and June 30, 1956.

PLAINTIFF'S EXHIBIT 95 (Continued)

Parmelee Transportation Company
300 North Dearborn Street
Chicago 6, Ill.

Morris Markin
Chairman of the Board

-4-

Mr. Padrick - continued

8. That the present coupon rate will be reduced from $1.22 to $1.20 as of July 1, 1955.

9. That the charges for all other services will remain the same.

If the foregoing meets with your approval, we will incorporate these terms in a formal contract.

30 days

Yours very truly,

PARMELEE TRANSPORTATION COMPANY

Morris Markin

Morris Markin,
Chairman of the Board

MM:ls

PLAINTIFF'S EXHIBIT 96

Parmelee Transportation Company
300 South Dearborn Street
Chicago 6, Ill.

N.Y.C. SYSTEM
MAY 23 1955
P. T. M. CHICAGO

M. Markin
Chairman of the Board

May 20, 1955

Mr. S. a. Bone
Passenger Traffic Manager
New York Central System
LaSalle Street Station
Chicago, Illinois

Dear Sid:

After reviewing the proposal presented yesterday, we hereby suggest the following amendment:

The base rate shall be established at $1.20. There shall be an increase of 1¢ for each 3¢ increase in the cost of labor. The maximum rates under this formula are as follows:

For the year commencing July 1, 1955 -	$1.20
For the year commencing July 1, 1956 -	1.22
For the year commencing July 1, 1957 -	1.23
For the year commencing July 1, 1958 -	1.24
For the year commencing July 1, 1959 -	1.25
For the year commencing July 1, 1960 -	1.25

To date, Parmelee has served the railroads for 102 years with no written contract, only the railroads' verbal commitment. We are still ready to honor the verbal commitment of the railroads for the next five years as per our understanding, without a written contract unless the railroads desire to have such a contract.

Yours very truly,

M. Markin

MM:MS

PLAINTIFF'S EXHIBIT 97

L. KEESHIN • 723 FIRST NATIONAL BANK BUILDING • CHICAGO 3, ILLINOIS

December 16, 1954

Mr. S. W. Bone
Passenger Traffic Manager
New York Central System
LaSalle Street Station
Chicago 5, Illinois

Dear Mr. Bone:

I am attaching hereto our proposal which could be the basis for a contract to be entered into between ourselves and the various Railroads involved.

If there are any questions concerning the subject matter of this proposal, please contact me and I shall be very happy to arrange an interview at a time and place convenient to you.

Very truly yours,

J. L. Keeshin

J. L. Keeshin

Enclosures

P.S. We are also attaching several pieces of advertising material of the type of equipment we plan to install in the vehicles we contemplate purchasing and using in the passenger and baggage service.

PLAINTIFF'S EXHIBIT 97 (Continued)

PROPOSAL FOR THE TRANSFERRING AND HANDLING OF PASSENGERS AND BAGGAGE BETWEEN THE STATIONS LOCATED IN THE CHICAGO AREA AND OTHER LOCATIONS AS ITEMIZED.

I am pleased to submit our proposal in regard to contracting for the transferring of passengers and baggage through Chicago, from the following stations: in Chicago the eight passenger stations (six so-called steam train terminals and two electric train terminals) as follows:

Dearborn Station	Dearborn and Polk
Grand Central Terminal	Harrison and Wells
Union	Canal and Adams
Central	Michigan and Eleventh Place
LaSalle	LaSalle and Van Buren
Northwestern	Madison and Canal
Chicago-North Shore	Adams and Wabash
Chicago-South Shore	Randolph and Michigan

A careful analysis has been made regarding the efficiency of the specific operations from and to these stations in the handling of passengers and baggage, the transferring of corpses, scheduling the delivery of baggage and passengers to and from the different stations, and the type of automotive equipment that should and will perform a satisfactory service.

We have carefully gone into the requirements in the transferring of passengers and baggage between the various stations as outlined, and have arrived at the conclusion that we can effect a faster transfer service of baggage. We also hope to improve on the handling of passengers by having available the latest and most modern vehicles, with all of the latest safety features and designed to afford the passengers safer and more comfortable riding.

It is our proposal to arrange to supply a sufficient amount of 20 ft. trailers equipped to operate satisfactorily to and from the stations as outlined. This operation commonly known as the Shuttle System will result in several transfers of baggage daily between stations. We believe that with this type of service, the results will bring about a considerable improvement in comparison to present day operations. Because of our com-

PLAINTIFF'S EXHIBIT 97 (Continued)

templated Shuttle Service we are inclined to believe, after a careful analysis, that the baggage can generally accompany the passenger on the train on which passenger is scheduled to depart.

With regard to transporting passengers between stations we will purchase a large fleet of modern, deluxe eight-passenger station wagons equipped with hydromatic drive, plus a modern type of air conditioning units with temperature control. Each individual station wagon will be equipped with an R.C.A. mobile radio unit.

It is our intention to set up at the LaSalle Street Station, a Central Dispatch System with the necessary radio equipment and manpower to facilitate our control to best utilize the drivers and automotive power. Later this radio control might be extended to our tractor equipment also, if that should become necessary.

The passenger equipment will have a large type heater to afford the passengers the same kind of winter comfort as the air conditioning units will provide for the summertime travelers. We feel that these kind of innovations will prove to be an added attraction for the travelers passing through the Chicago gateway. We also believe that the winter and summer comforts, and conveniences provided by the modern Deluxe railroad cars of today should be duplicated, as much as possible, in the automotive vehicle that is the connecting line between trains.

Our study of the movements of passengers convinces us that a radio control and dispatch will do much to eliminate passenger irritation caused by unnecessary delays because we are sure that it will be able to dispatch the equipment to whatever station may have a peak load of passengers on short notice at any intervals during the working day. We think it might also prove of real value in the instances of late arrivals of trains, or under other abnormal and emergency conditions. A further advantage of radio control, in our opinion, might be that the vehicle and driver will be instantly dispatched to transfer passengers with only a limited time to make the necessary train connections.

PLAINTIFF'S EXHIBIT 97 (Continued)

It will be our plan to keep our automotive units immaculate with a distinctive color scheme that will present a fine appearance, and which will be a fine advertisement for both the railroad and ourselves. We plan to have each passenger vehicle washed as often as is necessary, and particular care will be maintained to have the equipment clean, safe and sanitary inside and out.

The equipment we plan to purchase will be fully equipped with adequat luggage carriers manufactured of chrome and nickel, and with roll-back covers to protect the baggage of the passengers against dust and bad weather.

Because we plan on having a fleet of automotive units that will be an Ad for both of us, we do not intend to keep the individual units in our possession for a period to exceed thirty months. To say this differently, we undoubtedly will start replacing all automotive units within two years, with a maximum of two and one-half years. We feel that this kind of automotive passenger equipment will afford the traveling public a greater convenience in their passage through the Chicago gateway. We hope, in this way, to attract more fares for the railroads we will serve, and for the service which we are offering to contract to provide.

Before leaving this subject it might be well to call your attention to the attached list of exhibits pertaining to the various features of the passenger transport service between stations. As you will note, we have most of the necessary statistics to have some understanding of the fluctuation of the number of passengers during certain seasons, specific months, and even the hourly differences and peaks during the individual days. This exhibit and the resultant investigation and studies have lead us to the conclusion that we can estimate that one million three hundred thousand passengers will use our transfer service. We have allowed a five percent differential either up or down, in estimating the amount of manpower and equipment that will be necessary to provide for the railroads the satisfactory and efficient service to handle the number of passengers and baggage as outlined. Our projected estimates and figures are based on the period from July 1, 1955 through June 30, 1956.

PLAINTIFF'S EXHIBIT 97 (Continued)

We are willing and able to supply insurance coverage that is above normal limits. Our Public Liability Insurance coverage will be for the amount of $100,000 per person and $500,000 per singlecatastrophe. Our Property Damage Insurance coverage will be $50,000 to $100,000. In addition, we will supply a Cargo Insurance Policy to cover loss due to theft of the baggage or other articles transported between stations on our vehicles. Of course we will also carry full compensation insurance for our own employes, and we will purchase an indemnity bond to protect the general public, and our passengers, against any dishonesty act on the part of an employe. Naturally, we expect to arrange to supply to each railroad a copy of all these policies and will arrange that our policies protect the railroads.

During the time that we have been making our study of this subject, we have also been meeting with certain union officials regarding the wage factors involved, and certain working conditions that would be included in the applicable union contract.

We would like to interject at this point that the union that would be involved has been an organization with which my companies have dealt for more than thirty years. I would also like to add that the relationship existing between this union organization and myself, and my companies, has been eminently satisfactory.

The union referred to is Drivers Union Local 706, and most of our meetings and conferences have been with Mr. Edward Fenner, who has directed the activities of this Local for a number of years. I have been assured that we can arrive at a contract which will give us a satisfactory basis for the charges and rates we are submitting in this bid proposal. Most of the working conditions and other matters which are present in the usual union contract of this type have been discussed, and a thorough understanding has been arrived at. It should be understood that there will be a change in the local union contract which will be effective should we be awarded the contract. This change in union affiliation will not create any confusion or difficulties in the operation of our contemplated services.

PLAINTIFF'S EXHIBIT 97 (Continued)

Based upon the facts outlined in this letter and other data which we have studied, we are prepared to submit a price of $1.20 per coupon for the transfer of passengers and baggage between stations. This charge per coupon is based on our cost analysis of the factors involved plus our labor contract which will become effective July 1, 1955 through June 30, 1956. If at the end of the first year's union contract there should be a wage increase, we would like to arrange to be protected by an escalator clause to be as follows: for each 5¢ increase in the direct wage cost, we would expect to receive a 1¢ increase per coupon. Because of our complete confidence in the future of the Railroad Industry, and because of their constant desire to improve their equipment and service, we will not hesitate to invest whatever amount of capital may be required so that we may also be a partner in the future growth and progress of that industry. Our estimate of the amount of capital required to furnish all the facilities and equipment necessary will exceed $[illegible]00,000. Because of the large amount of capital invested in this operation to best provide the type of service and equipment we feel will best service the needs of all concerned, we are prepared to enter into a contract agreement for a period of five years. We feel that a contract of five years duration offers both you and us the best opportunity to provide a permanent and satisfactory service, and to build a fine and mutually advantageous business relationship.

The charges for delivery of baggage to the several locations within the city of Chicago, and to the suburbs specifically mentioned in the list attached will be the same as the charges presently assessed at this time.

As previously discussed, it is understood that we will arrange to spot semi-trailer equipment at baggage room docks for the purpose of loading or unloading of baggage by baggage-room employes. It is understood that baggage may be loaded and unloaded by baggage-room employes providing our tractors are not attached to the trailers. This trailer equipment will be spotted without tractors at the following stations: Grand Central, Chicago and Northwestern, Union, LaSalle, Central and Dearborn Stations. We feel that this method of operation will provide opportunities for certain

PLAINTIFF'S EXHIBIT 97 (Continued)

savings in your direct labor costs. It will, of course, be advantageous to us and it will afford us an opportunity to expedite the transfer of baggage between stations.

We have made a thorough study of the costs factors involved and believe that we can render a complete and satisfactory service which shall prove profitable.

We also plan to purchase several pieces of light pickup truck equipment to handle special movements of baggage and other traveling equipment for special groups such as show people, sports, or any other groups of individuals requiring special service. Our charges for this type of equipment and service will be $7.00 per hour. It is understood that these charges will be applicable only for special moves by the type of equipment described.

The other special movement, such as the transportation of a corpse - to illustrate one, will be the same as the rate now in effect, namely, $7.50.

Any or all other movements of articles not covered in the proposal above can be the subject of further discussion at any time convenient to yourselves. You may be sure that equitable and fair charges will be assessed subject to your approval.

Mr. James U. Snydacker, Vice President of the First National Bank of Chicago, can be contacted on any question concerning credit and the financial responsibility of the writer. He will be happy to supply any financial data you may require.

Submitted by:
J. L. Keeshin
723 First National Bank Building
Chicago 3, Illinois Phone: ANdover 3 6685

December 15, 1954

PLAINTIFF'S EXHIBIT 97 (Continued)

NUMBER OF CARS AND PASSENGERS HANDLED IN BASE PERIOD
AVERAGE OF TWO DAYS IN MARCH, 1954
FIGURES FURNISHED BY RAILROAD

Schedule 1

HOURS	ILLINOIS CENTRAL		GRAND CENTRAL		DESPLAINES		LASALLE		NORTHWESTERN		UNION		CAR TOTAL	PASS. TOTAL	PERCENT TO TOTAL
	CAR	PASS.	CAR	PASS.	CAR	PASS.	CAR	PASS.	CAR	PASS.	CAR	PASS.	CAR	PASS.	
7-8	9	27	5	17	26	138	19	86	19	90	24	91	102	449	15.5%
8-9	10	34	13	47	5	15	14	45	24	83	15	45	81	269	10.0
9-10	6	20	1	1	23	110	14	25	12	-	16	42	72	198	6.8
10-11	5	20	-	-	2	4	1	1	12	28	2	4	22	57	2.0
11-12	-	—	7	23	2	4	12	65	30	133	15	78	66	303	10.4
12-1	12	44	-	-	1	4	9	30	3	3	4	9	29	90	3.1
1-2	8	28	-	—	4	8	7	10	13	69	22	92	54	207	7.1
2-3	14	67	11	43	8	15	4	4	5	7	25	142	67	278	9.6
3-4	5	16	-	-	12	55	15	56	22	70	23	160	77	357	12.3
4-5	12	45	-	-	-	-	9	15	10	3	5	36	36	99	3.4
5-6	-	-	-	-	17	6	8	33	7	-	9	30	41	69	2.4
6-7	1	4	-	-	-	-	2	4	3	4	3	7	9	19	.7
7-8	6	25	-	-	-	-	3	4	14	49	8	22	31	100	3.4
8-9	11	47	3	3	8	36	3	9	8	19	10	40	43	214	7.4
9-10	6	14	-	-	4	11	13	28	11	41	12	52	46	146	5.0
10-11	6	15	-	-	-	-	-	-	1	1	5	12	12	27	.9
													788	2,902	

1,300,000

AVERAGE PASSENGERS PER MONTH BASED ON 1,300,000 PASSENGERS A YEAR

Schedule 2

MONTH	* PERCENT TO TOTAL	NO. OF PASSENGERS	SEARBORN 17%	UNION 23%	GRAND CENTRAL 6%	NORTH WESTERN 15%	LASALLE 25%	ILL. CENTRAL 10%	SOUTH SHORE 1%	NORTH SHORE 3%
January	9.15	118,300	20,111	27,209	7,098	17,745	29,575	11,830	1,183	3,549
February	6.5	84,500	14,365	19,435	5,070	12,675	21,125	8,450	845	2,535
March	7.3	94,900	16,133	21,827	5,694	14,235	23,725	9,490	949	2,847
April	7.3	94,900	16,133	21,827	5,694	14,235	23,725	9,490	949	2,847
May	7.3	94,900	16,133	21,827	5,694	14,235	23,725	9,490	949	2,847
June	10.1	131,300	22,321	30,199	7,878	19,695	32,825	13,130	1,313	3,939
July	10.8	131,300	22,321	30,199	7,878	19,695	32,825	13,130	1,313	3,939
August	10.5	136,500	23,205	31,395	8,190	20,475	34,125	13,650	1,365	4,095
September	8.5	110,500	18,785	25,415	6,630	16,575	27,625	11,050	1,105	3,315
October	7.3	94,900	16,133	21,827	5,694	14,235	23,725	9,490	949	2,847
November	6.5	84,500	14,365	19,435	5,070	12,675	21,125	8,450	845	2,535
December	9.5	123,500	20,995	28,405	7,410	18,525	30,875	12,350	1,235	3,705

* These percentage figures are taken from a report presented by the railroads.

PLAINTIFF'S EXHIBIT 97 (Continued)

AVERAGE NUMBER OF PASSENGERS PER DAY
BASED ON SCHEDULE #2

Schedule 3

MONTH	* PERCENT TO TOTAL	NO. OF PASS.	DEARBORN UNION		GRAND CENTRAL	NORTH WESTERN	LASALLE	ILL. CENTRAL	SOUTH SHORE	NORTH SHORE
January	9.15	3,942	670	907	237	592	986	394	39	118
February	6.5	2,817	479	648	169	423	704	282	28	84
March	7.3	3,163	537	728	189	474	791	317	32	95
April	7.3	3,163	537	728	189	474	791	317	32	95
May	7.3	3,163	537	728	189	474	791	317	32	95
June	10.1	4,373	744	1,006	263	656	1,094	437	44	131
July	10.1	4,373	744	1,006	263	656	1,094	437	44	131
August	10.5	4,550	773	1,046	273	682	1,134	455	46	136
September	8.5	3,683	626	847	221	553	921	368	37	111
October	7.3	3,163	537	728	189	474	791	317	32	95
November	6.5	2,817	479	648	169	423	704	282	28	84
December	9.5	4,117	700	947	243	617	1,029	412	42	123

* These percentage figures were taken from Schedule #1

PLAINTIFF'S EXHIBIT 97 (Continued)

[illegible]

Schedule 4

HOURS	PERCENT TO TOTAL	3,942 PASSENGERS	670 [illegible]		907 [illegible]		237 [illegible]		592 [illegible]		986 [illegible]		394 Ill.Cent.		39 S.S.		118 N.S.		TOTAL VEHICLES
7-8	15.5%	611	8	104	11	141	5	37	8	92	12	153	6	61	2	6	3	18	55
8-9	10.0	394	6	67	8	91	3	24	6	59	8	99	4	39	1	4	2	12	38
9-10	6.8	268	5	46	6	62	2	16	4	40	6	67	3	27	1	3	2	8	29
10-11	2.0	79	3	13	3	18	1	5	2	12	3	20	2	8	1	1	1	2	16
11-12	10.4	410	7	70	9	94	3	25	6	61	8	103	4	41	1	4	2	12	40
12-1	3.8	122	3	21	3	28	2	8	3	18	3	31	2	12	1	2	1	4	18
1-2	7.1	200	5	48	6	64	2	17	5	42	7	70	3	28	1	3	2	8	31
2-3	9.6	378	6	64	7	87	3	23	6	57	8	95	4	38	1	4	2	11	37
3-4	12.3	473	8	82	9	112	3	29	6	73	10	121	5	48	1	5	3	15	45
4-5	3.4	134	3	23	4	31	2	8	3	20	4	34	3	13	1	2	1	4	21
5-6	2.4	94	3	16	3	22	2	6	3	14	3	24	2	9	1	1	1	3	18
6-7	.7	28	2	5	2	6	1	2	1	4	2	7	1	3	1	1	1	1	11
7-8	3.4	134	3	23	4	31	2	8	3	20	4	34	3	13	1	2	1	4	21
8-9	7.4	292	5	50	6	67	3	18	5	44	7	73	3	30	1	3	2	9	32
9-10	5.0	197	4	34	5	45	3	12	4	30	5	50	3	20	1	2	2	6	27
10-11	.9	35	6	60	2	8	1	3	2	6	2	9	1	4	1	1	1	1	16
TOTALS		3,942	[illegible]	670	[illegible]	907		237		592		986		394		39		118	

The first of each pair of columns represent the number of vehicles considered necessary to carry the passengers which we forecast will arrive at each station.

The second column represents the number of passengers we anticipate will arrive. These figures are based on Schedules numbered 91 [illegible] and 93.

PLAINTIFF'S EXHIBIT 87 (Continued)

AVERAGE NUMBER OF PASSENGERS PER DAY AND PER HOUR FOR THE MONTH OF SEPTEMBER

HOURS	PERCENT TO TOTAL	NO. PASSENGERS	BRADDOCK		HITCH		GRAND CENTRAL		NORTH WESTERN		LASALLE		ILL. CENTRAL		S.S.		N.S.		TOTAL VEHIC
7-8	15.5%	572	8	97	11	131	4	34	7	86	12	143	5	57	1	8	2	17	50
8-9	10.0	368	7	63	7	85	3	22	5	55	8	92	4	37	1	4	2	11	49
9-10	6.8	250	4	43	5	58	2	15	4	38	7	63	3	25	1	3	2	8	28
10-11	2.0	74	2	13	2	17	1	4	2	11	2	18	2	7	1	1	1	3	13
11-12	10.4	383	7	65	7	88	3	23	5	58	8	96	4	38	1	4	2	12	37
12-1	3.8	114	3	19	3	26	2	7	2	17	4	29	2	11	1	2	1	3	18
1-2	7.1	261	4	44	5	60	2	16	4	39	7	65	3	26	1	2	2	6	28
2-3	9.6	354	7	60	7	81	3	21	5	53	8	88	4	35	1	3	2	11	37
3-4	12.3	453	7	77	8	104	3	27	7	66	8	113	4	45	1	5	2	14	49
4-5	3.4	125	3	21	4	29	2	8	3	19	4	31	2	13	1	1	1	4	20
5-6	2.4	88	2	15	3	20	1	5	2	13	3	22	2	9	1	1	1	3	15
6-7	.7	26	1	4	1	6	1	2	1	4	1	6	1	3	1	1	1	1	8
7-8	3.4	125	3	21	4	29	2	8	3	19	4	31	2	13	1	1	1	4	20
8-9	7.4	272	4	46	7	63	2	15	4	41	7	68	3	27	1	2	2	8	30
9-10	5.0	184	4	31	4	42	2	11	3	28	5	46	3	18	1	2	1	6	23
10-11	.9	33	1	6	2	8	1	2	1	5	2	8	1	3	1	1	1	1	10
TOTAL		3,683		626		847		221		553		921		368		57		111	

The first of each pair of columns represent the number of vehicles considered necessary to carry the passengers which we forecast will arrive at each station.

The second column represents the number of passengers we anticipate will arrive. These figures are based on Schedules #1, #2, and #3.

AVERAGE NUMBER OF PASSENGERS BY DAY AND
BY HOUR FOR THE MONTHS OF JUNE, JULY AND AUGUST

HOURS	PERCENT TO TOTAL	NO. PASSENGERS	DEARBORN		BUICK		GRAND CENTRAL		NORTH WESTERN		LASALLE		ILL. CENTRAL		S. S.		N. S.		TOTAL VEHICL
7-8	15.5%	678	8	115	12	155	4	41	8	101	14	170	7	68	2	7	3	20	56
8-9	10.0	437	7	74	8	100	4	26	7	65	8	109	4	44	1	4	2	13	40
9-10	6.8	297	5	51	7	69	2	18	4	43	7	74	4	30	1	3	2	9	32
10-12	2.0	87	2	15	3	20	1	5	2	13	3	22	2	9	1	1	1	3	15
12-12	10.4	455	7	77	8	105	4	27	7	68	8	114	4	45	1	4	2	14	41
12-1	3.1	136	4	23	4	31	2	8	3	20	4	34	2	14	1	1	1	4	21
1-2	7.1	310	5	53	7	71	2	19	4	47	7	78	4	31	1	3	2	9	32
2-3	9.6	420	7	71	8	96	4	25	7	61	8	105	4	42	1	4	2	13	40
3-4	12.3	537	8	92	9	124	4	32	7	63	11	135	5	54	1	5	2	16	47
4-5	3.4	149	4	25	4	34	2	9	3	22	4	37	2	15	1	1	1	4	21
5-6	2.4	105	2	18	3	24	1	6	2	16	3	26	2	10	1	1	1	3	15
6-7	.7	31	1	5	2	8	1	2	1	5	2	8	1	3	1	1	1	1	10
7-8	3.4	149	4	25	4	34	2	9	3	22	4	37	2	15	1	1	1	4	21
8-9	7.4	324	5	55	7	74	2	19	4	49	7	81	4	32	1	3	2	10	32
9-10	5.0	219	4	37	5	50	2	13	4	33	5	55	3	22	1	2	1	6	25
10-11	.9	40	2	7	2	9	1	2	1	6	2	10	1	4	1	1	1	1	11
TOTAL		4,373		744		1,006		263		656		1,094		437		44		131	

The first of each pair of columns represent the number of vehicles considered necessary to carry the passengers which we forecast will arrive at each station.

The second column represents the number of passengers we anticipate will arrive. These figures are based on Schedules #1, #2, and #3.

AVERAGE NUMBER OF PASSENGERS BY DAY AND BY HOUR FOR THE MONTHS OF FEBRUARY AND NOVEMBER

HOURS	PERCENT TO TOTAL	NO. PASSENGERS	BRANCHES		UNION		GRAND CENTRAL		NORTH WESTERN		LASALLE		ILL. CENTRAL		S. S.		N. S.		TOTAL VEHICLE
7-8	15.5%	437	7	74	8	101	3	26	6	66	8	109	5	44	1	4	3	13	41
8-9	10.0	282	5	48	6	65	3	17	5	42	7	71	3	28	1	3	2	8	36
9-10	6.8	192	4	33	5	44	2	11	3	29	5	49	3	19	1	2	1	6	24
10-11	2.0	56	2	10	2	13	1	3	2	8	3	14	1	6	1	1	1	2	13
11-12	10.4	293	5	50	6	67	3	18	5	44	7	73	4	30	1	3	2	9	33
12-1	3.1	87	3	15	3	20	1	5	2	13	3	22	2	9	1	1	1	3	16
1-2	7.1	200	4	34	5	46	2	12	3	30	5	50	3	20	1	2	1	6	24
2-3	9.6	270	5	46	6	62	3	16	5	41	7	68	3	27	1	3	2	8	32
3-4	12.3	346	6	59	7	80	3	21	6	52	7	87	4	35	1	3	2	10	35
4-5	3.4	96	3	16	3	22	1	6	2	14	3	24	2	10	1	1	1	3	17
5-6	2.4	68	3	12	3	16	1	4	2	10	3	17	2	7	1	1	1	2	16
6-7	.7	20	1	3	1	5	1	2	1	3	1	5	1	2	1	1	1	1	8
7-8	3.4	96	3	16	3	22	1	6	2	14	3	24	2	10	1	2	1	3	16
8-9	7.4	208	4	35	5	48	2	13	3	31	5	52	3	21	1	2	1	6	24
9-10	5.0	141	3	24	4	33	2	8	3	21	4	35	3	14	1	2	1	4	21
10-11	.9	26	1	4	2	6	1	2	1	4	2	6	1	3	1	1	1	1	10
	TOTAL	2,819		479		648		169		423		704		282		28		84	

The first of each pair of columns represent the number of vehicles considered necessary to carry the passengers which we forecast will arrive at each station.

The second colum represents the number of passengers we anticipate will arrive. These figures are based on Schedules #1, #2 and #3.

AVERAGE NUMBER OF PASSENGERS BY DAY AND
BY HOUR FOR THE MONTHS OF MARCH, APRIL, MAY AND OCTOBER

HOURS	PERCENT TO TOTAL	NO. PASSENGERS	PEARDON		UNION		GRAND CENTRAL		NORTH WESTERN		LASALLE		ILL. CENTRAL		S. S.		N. S.		TOTAL VEHICL
7-8	15.5%	490	7	83	8	113	4	29	7	73	9	123	5	49	2	5	2	15	44
8-9	10.0	316	5	54	7	73	3	19	5	47	7	79	4	32	1	3	2	9	34
9-10	6.8	215	4	37	5	50	2	13	4	32	5	54	3	22	1	2	1	6	25
10-11	2.0	63	2	11	2	15	1	4	2	9	2	16	1	6	1	1	1	2	12
11-12	10.4	329	5	54	7	76	3	20	5	49	7	82	4	33	1	3	2	10	34
12-1	3.1	98	2	17	3	23	1	6	2	15	3	25	2	10	1	1	1	3	15
1-2	7.1	225	4	38	5	52	2	14	4	34	5	56	3	23	1	2	2	7	26
2-3	9.6	304	5	52	7	70	3	18	5	45	7	76	4	30	1	3	2	9	34
3-4	12.3	389	6	66	7	90	3	23	5	58	8	97	4	39	1	4	2	12	36
4-5	3.4	108	2	18	3	25	2	7	2	16	3	27	2	11	1	1	1	3	16
5-6	2.4	76	2	13	2	17	1	4	2	11	3	19	2	8	1	1	1	2	14
6-7	.7	22	1	4	1	6	1	2	1	3	1	6	1	2	1	1	1	1	8
7-8	3.4	108	2	18	3	25	3	7	2	16	3	27	2	11	1	1	1	3	17
8-9	7.4	234	4	39	5	54	2	14	4	35	5	59	3	23	1	2	2	7	26
9-10	5.0	158	3	47	4	37	2	9	3	24	4	40	2	16	1	2	1	5	22
10-11	.9	28	1	5	2	7	1	2	1	4	2	7	1	3	1	1	1	1	10
	TOTAL	3,163		537		728		189		474		791		317		32		95	

The first of each pair of colums represent the number of vehicles considered necessary to carry the passengers which we forecast will arrive at each station.

The second column represents the number of passengers we anticipate will arrive. These figures are based on Schedules #1, #2, and #3.

PLAINTIFF'S EXHIBIT 98

C O P Y

J. L. KEESHIN
723 First National Bank Building
Chicago 3, Illinois

January 15, 1955

Mr. Sidney W. Bone
Passenger Traffic Manager
New York Central System
LaSalle Street Station
Chicago 5, Illinois

Dear Mr. Bone:

This will have reference to your letter of January 11, 1955, in connection with the Chicago Association of Commerce and Industry bulletin covering the truck drivers' recent three year labor wage contract.

The contracts in question were concluded for a three year period, setting up for the first year, ten cents an hour wage increase, a five cent an hour pension fund, and an additional $2.75 a week welfare fund including hospitilization and medical care.

Since the labor contract is now settled covering a three year period, I am willing to correct our original proposal on the escalator clause so that the rate per coupon for the second year will be $1.22 per coupon, and the third year will be $1.23 per coupon. The only revision will be the one cent increase covering the third year.

To summarize, we will protect a $1.20 per coupon rate for the first year, $1.22 coupon rate for the second year, and $1.23 for the third year.

There may be a question raised by your committee concerning peaceful labor relations in the event we are awarded the contract. Let me assure you and your committee that this subject has been gone into most thoroughly, both with Mr. Edward Fenner who is the head of the Drivers' Union Local 705, and also with Mr. James Hoffa, the International Executive Vice-President of the drivers' union, and they have assured me of every cooperation to maintain complete harmony in order to have a satisfactory service available at all times. They would be glad to meet with your committee to give them their personal assurance.

Sincerely,
(sgd) J.L.Keeshin

PLAINTIFF'S EXHIBIT 99

COPY

J. L. KEESHIN - 723 First National Bank Building - Chicago 3, Illinois

April 6, 1955.

Mr. Sidney W. Bone
Passenger Traffic Manager
New York Central
LaSalle Street Station
Chicago 5, Illinois

Dear Mr. Bone:

Since returning from an extended trip abroad, I had the occasion to review my file covering our proposal submitted to you in connection with the handling of passengers and baggage between the several railroad stations in Chicago. In reviewing my letter to you dated December 15, 1954, as well as the one of January 15, 1955, I note I was not entirely specific in several instances, and in order to convey a clear and concise picture to those concerned, I would appreciate it if you would kindly accept the following clarifications:

a) After an exhaustive study and consideration of the facts before me, I believe further enlightenment covering use of 20' trailers for the purpose of transporting passenger baggage is called for.

b) Agents will be assigned to take care of passenger requirements, and will be available at all stations sixteen hours a day.

c) Observation reveals the handling of baggage by your employes could be reduced. The present method of handling the baggage onto your baggage hand trucks, unloading and stowing on the floor in baggage rooms, and reloading creates congestion and contributes to the loss and damage potential. Our plan tends to diminish the handling and labor involved. Your employes would merely drop the baggage directly on the trailer, rather than go thru the several handling chores observed during our survey, and would neither stack nor load baggage on trailers.

d) The loading and unloading facilities have been thoroly studied by us at the depots. Our proposal involves activating a central consolidating station in the event all stations cannot handle the same amount of trailers. At this centrally located point, all baggage would be moved and sorted for ultimate delivery to respective stations.

e) Under this plan there would be no idle equipment. The 20' trailers proposed to be used by us have been found economical and mechanically sound. Our survey convinces us that the use of these units would contribute without question to the reduction of handling, congestion and confusion, and the transfers would be completed every 90 minutes of the day. My experience over the past 38 years convinces me that the use of tractor trailer equipment of the design and make we propose to use will prove more economical, and add to the overall efficiency of the baggage transfer.

PLAINTIFF'S EXHIBIT 99 (Continued)

f) Our union labor regulations do not restrict the driver performing this service. The loading and/or unloading would entail no additional cost to the railroads, but rather reduce the overall costs in manpower presently in use.

g) These plans, if not acceptable to the railroads may be accepted as optional. However, in place of the present 12' or 14' bodies, we would infinitely prefer using the 20' trailer for the baggage transfer which would be more flexible and have more loading space than a straight truck with a 14' body. Furthermore, a cab over engine tractor with a 20' trailer affords greater maneuverability than a straight truck in congested downtown areas and with the driver unloading and/or loading, the savings should be obvious.

h) In our original proposal, we should have stated in the event the railroad management interposed objections to, or doubted the feasibility of the trailer plan outlined above, we would eliminate it and substitute an operation similar to what you now have, except in place of a straight truck which has either a 12' or 14' body. I would strongly urge the use of a 20' trailer for the transfer of baggage, and our drivers would be responsible for the loading and unloading as is presently being performed. We assure you that our many years of experience dictates to us that this would be in the best interest of all concerned. Our union labor regulations do not restrict the drivers performing this service.

i) The supplemental letter of January 15, 1955 was written immediately prior to my leaving on my trip. I note that I failed to outline that my proposed rate ranging from $1.20 per coupon for the first year, $1.22 per coupon for the second year, and $1.23 per coupon for the third year, protects the railroad management against any further increases, and in no way would affect the rate in the event of any decline in passenger traffic. Our escalator clause applies on the basis of every 5 cents an hour increase in wages commencing with the fourth year, the increase rate per coupon would be 1 cent, and of course on any decrease in wages, the same formula would apply on a reduction, i. e., 1 cent per coupon for every 5 cents an hour decrease.

j) To reiterate, any decrease which might confront you in passenger traffic, will in no way affect our proposed rate, or the efficiency of the service. That is a fixed guarantee for three years, and we submit any economical change in this operation would be one for management to cope with, and adjust according to the dictates of its experience and ability.

The writer has been actively engaged in the field of transportation for 38 years and feels completely confident that the mechanics and methods proposed to your association are sound and workable. The type of service we would render is based on a cooperative effort to assist the railroad management with their program of modernistic and efficient equipment and services.

PLAINTIFF'S EXHIBIT 99 (Continued)

We submit that the present modern improvements by the railroads should be carried further to afford a deluxe service to the passengers using the "bridge service" between Chicago stations. The equipment to be used by us will be radio-phone controlled, air conditioned during the summer months, and chauffeured by specialists in their field. It is felt that the accompanying publicity telling the public of the improved comfort at their disposal when transferring at the Chicago gateway, will in some measure prove helpful in eliminating further decrease of passenger traffic in this region, and prove consistent with the railroads' endeavors to improve their service wherever possible in the public interest.

If there are other items that are not properly clarified, I would appreciate an opportunity to meet with your committee to discuss all matters involved in this proposal.

Very truly yours,

/s/ J. L. Keeshin
/t/ J. L. Keeshin

JLK:R

PLAINTIFF'S EXHIBIT 100

WESTERN PASSENGER ASSOCIATION

Room 436 Union Station
916 West Jackson Boulevard
CHICAGO 6, ILLINOIS

E. B. Padrick, Chairman
H. B. Siddall, Vice-Chairman

Max D. Emmanuel, Secretary
H. T. Nelson, Chief of Tariff Bureau

September 27, 1955

CONTRACT WITH RAILROAD TRANSFER SERVICE, INC., TO PERFORM TRANSFER SERVICE IN THE CITY OF CHICAGO

Messrs:

J J Alms	J R Brennan	E M Holt	A G Oldenquist
R S Amis	I C Bruce	R E Jamieson	E E Pierce
A N Anderson	R E Coleman	G G Kottenstette	H Sengstacken
R T Anderson	E R Comer	T E LeSueur	Geo F Sherman
F H Baird	W R Godley	A A Meyer	R R Spangenberg
J A Barrett	E E Gordon	P G Nagle	R E Towns
R F Berndt	B J Grenrood	T E Nerland	R B Weaver
J L Bickley	H E Hay	R W Ohlman	J F Whittington
S W Bone			R G Wood

Gentlemen:

There are attached two copies of the final contract covering transfer service in the city of Chicago by Railroad Transfer Service, Inc., effective October 1, 1955.

Attention is called to Appendix A, attached thereto, which shows the consist of the terminal area from which baggage pick-up and delivery service will be performed by Railroad Transfer Service, Inc.

Yours truly,

E B PADRICK

FILED
AUG 15 1960
AT ___ O'CLOCK
ROY H. JOHNSON

Copy to Messrs:

C P Fisher
J J Nolan
C K Strader
F J Wasson
A J Winkler

Plaintiffs Exhibit 100 Defendants Exhibit
Iden.
Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

Attachment (2 copies)

56 e 3 53 A 467

PLAINTIFF'S EXHIBIT 100 (Continued)

THIS AGREEMENT, made as of the first day of October, 1955, by and between the following railroads (hereinafter referred to as "Terminal Lines"):

The Atchison, Topeka and Santa Fe Railway Company

The Baltimore and Ohio Railroad Company

The Chesapeake and Ohio Railway Company

Chicago & Eastern Illinois Railroad Company

Chicago and North Western Railway Company

Chicago, Burlington & Quincy Railroad Company

Chicago Great Western Railway Company

Chicago, Indianapolis and Louisville Railway Company

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Chicago North Shore and Milwaukee Railway

Chicago, Rock Island and Pacific Railroad Company

Chicago South Shore and South Bend Railroad

Erie Railroad Company

Grand Trunk Western Railroad Company

Gulf, Mobile and Ohio Railroad Company

Illinois Central Railroad Company

Minneapolis, St. Paul & Sault Ste. Marie Railroad Company

The New York Central Railroad Company

The New York, Chicago and St. Louis Railroad Company

The Pennsylvania Railroad Company

Wabash Railroad Company

and the following named corporations (hereinafter referred to as "Depot Companies") which are owners of certain railroad terminal facilities in Chicago:

The Baltimore and Ohio Chicago Terminal Railroad Company

Chicago and Western Indiana Railroad Company

Chicago Union Station Company

by their duly appointed Agent, Mr. E. B. Padrick, with offices in Room 436 Union Station, 516 West Jackson Boulevard, Chicago 6, Illinois, Parties of the First Part, and RAILROAD TRANSFER SERVICE, INC. (hereinafter referred to as "Transfer"), a Delaware corporation, with its principal office at 400 West Kinzie Street, Chicago 10, Illinois, Party of the Second Part,

PLAINTIFF'S EXHIBIT 100 (Continued)

W I T N E S S E T H:

The twenty-one (21) railroads listed above (hereinafter referred to as "Terminal Lines") have filed tariffs for through passenger service (hereinafter referred to as "through service") from points outside to points beyond Chicago on or reached via the incoming and outgoing participating Terminal Lines and steamship lines, and for the delivery of baggage to or from any terminal station, and any point within the area described in Appendix A attached hereto (hereinafter referred to as the "terminal area"). The terminal station of each of the Terminal Lines is located in some one (1) of eight (8) terminal railroad stations located in the downtown area of Chicago (hereinafter referred to as "terminal station"), in which downtown area are located also the steamer docks. Three (3) of the terminal stations are used by one (1) railroad; five (5) other terminal stations have from two (2) to four (4) railroads each; and one (1) terminal station has six (6) railroads. The relative location of the eight (8) terminal stations and the steamer docks makes the use of motor vehicle transportation desirable for passenger and baggage transfer between terminal stations whenever the railroads involved are not located in the same terminal station, and between the terminal stations and the steamer docks.

Under applicable tariffs, transportation for through service includes any required passenger and baggage transfer from the terminal station in Chicago of the incoming line (hereinafter referred to as "incoming station") to the terminal station in Chicago of the outgoing line (hereinafter referred to as "outgoing station") and from the incoming station to the steamer dock of the outgoing steamer (hereinafter referred to as "outgoing dock") and from the steamer dock of the incoming steamer (hereinafter referred to as "incoming dock") to the outgoing station, and is applicable only for the Terminal Lines and the steamship lines which by separate agreement adopt the terms of this Agreement applicable to them.

The Terminal Lines have found it desirable to provide a transfer service between terminal stations in Chicago, and between said stations and steamer docks.

Transfer has been organized for the purpose of entering into this Agreement. Transfer is ready, willing and able to perform all the required passenger and baggage transfer services specified in this Agreement, all intended to relieve the passenger of the responsibility for caring for the required

PLAINTIFF'S EXHIBIT 100 (Continued)

passenger and baggage transfer in Chicago, and to provide for his passenger transfer, within the limited time available therefor, motor vehicle transportation, with the safety, convenience and comfort generally accepted as an incident of passenger automobile transportation normally available for that purpose; and Transfer has offered to perform all such services upon the terms and conditions and for the charges and collections set forth in this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED, as follows:

Passenger and Hand Baggage Transfer Service

1. Transfer agrees to furnish and perform the following services (hereinafter collectively referred to as "Passenger and Hbaggage Transfer Service"); Hand baggage, also referred to as Hbaggage, as used herein, means baggage that is moved with the passenger, not under check in baggage car service.

(a) To transport in a passenger vehicle the passenger with, or without, accompanying Hbaggage from incoming station or incoming dock to outgoing station or outgoing dock shown on coupon, upon delivery of coupon for cancellation to Transfer's agent at the incoming station or incoming dock, as the case may be.

(b) A passenger traveling in a wheelchair, otherwise qualified, shall become qualified for the Passenger and Hbaggage Transfer Service if his condition is such as to permit him to be transported in regular service.

(c) A passenger who is traveling on a litter or stretcher shall not be qualified for the Passenger and Hbaggage Transfer Service.

2. Transfer shall furnish and perform the Passenger and Hbaggage Transfer Service in accordance with the following:

(a) A time schedule shall be established and maintained seven (7) days per week. Such schedule shall be determined and established in accordance with the incoming and outgoing train schedules with the approval of the Terminal Lines in conference with Transfer. Transfer's agents shall be on duty at each terminal station during periods of transfer.

PLAINTIFF'S EXHIBIT 100 (Continued)

(b) Transfer shall determine the route or routes for this service, and insofar as reasonably practical, such routes shall permit the most expeditious service between the terminal stations involved.

(c) Transfer shall furnish and operate a sufficient number of suitable passenger vehicles to carry out this service. All such vehicles shall have ample accommodations for conveniently and safely carrying its passengers and their accompanying Hbaggage. Air conditioning shall be installed and maintained in these passenger vehicles. These vehicles shall be maintained in a clean, safe and sanitary condition. Passenger equipment used by Transfer in any service under this Agreement will be replaced by Transfer with new equipment within thirty (30) months after the commencement of its use. If, in the opinion of Transfer, there is a need for a different type of vehicle, and such vehicle is acceptable to the Terminal Lines, the period of replacement of such type of vehicle will be arranged through mutual agreement between Transfer and the Terminal Lines. Equipment other than passenger equipment used by Transfer in this service will be replaced by Transfer as necessary or desirable for high-grade service.

(d) Insofar as it may be reasonably practical, passenger and his Hbaggage shall be transported in the same passenger vehicle, having due regard for the safety, comfort and convenience of such passenger and the security of such Hbaggage. To the extent that the passenger vehicle does not have adequate space available for transporting the passenger and all his Hbaggage, his excess Hbaggage shall be transported in another vehicle to his outgoing station or outgoing dock so as to make possible the departure of such passenger and all his Hbaggage on the same scheduled outgoing train or outgoing steamer.

(e) All of Transfer's personnel assigned to this service shall wear appropriate uniforms while on duty in this service.

(f) Transfer reserves the right, and shall have the sole right and discretion:

PLAINTIFF'S EXHIBIT 100 (Continued)

(1) To transfer en route passenger and/or his accompanying Hbaggage from one to another of its vehicles, as operating conditions may require;

(2) To refuse to accept for transport in such service any prospective passenger for this service otherwise qualified, and/or to remove any passenger of through service, in any case where such passenger is under the influence of intoxicating liquors or drugs or is incapable of taking care of himself;

(3) To determine whether, and under what conditions, a household pet as defined in applicable tariffs, which under said tariffs may be brought into the passenger's train space, shall be allowed to accompany him to his place in the passenger vehicle, instead of being placed in the space therein allowed for Hbaggage transport;

(4) To the extent determined by Transfer to be reasonably practical and economically sound, to provide in co-operation with the Terminal Lines involved, special passenger transfer equipment and special services to accommodate passengers traveling in groups, such as athletic teams, show troupes or other groups traveling under special arrangements with such Terminal Lines, and to provide for these groups adequate service and to meet the special conditions surrounding the travel of these special groups; and in the absence of agreement between Transfer and the Terminal Lines involved, such Terminal Lines may make arrangements with others for such special passenger equipment and special services.

3. Transfer shall be entitled to receive compensation computed in accordance with the following schedule for service rendered by it under the Passenger and Hbaggage Transfer Service, which shall be paid by the applicable outgoing Terminal Line or outgoing steamship line, as the case may be:

SCHEDULE OF CHARGES

Coupons

(a) Transfer shall be entitled to receive for each cancelled coupon delivered by it to the Terminal Line shown thereon serving the outgoing station, and the Terminal Line handling the passenger

PLAINTIFF'S EXHIBIT 100 (Continued)

from the outgoing station shall be obligated to pay Transfer therefor, a sum of money equal to the applicable per-coupon rate shown in the following schedule:

Military Personnel on Furlough

(1) For each cancelled coupon shown thereon to have been issued in connection with a valid ticket covering a fare applicable to military personnel on furlough, as passengers—

	Applicable Per Coupon Rate
	$ 0.85

No change shall be made in that rate except by mutual consent.

Adults

(2) For each cancelled coupon shown thereon to have been issued in connection with a valid ticket covering a valid fare applicable to adult passengers (other than military personnel on furlough), and showing on the face of such coupon that it was cancelled at a date falling within the consecutive twelve (12) month period (hereinafter referred to as "year") indicated below, following the commencement date of this service, the applicable per-coupon rate shall be the indicated per-coupon rate for that numbered year, as follows:

Year	Applicable Per Coupon Rate
1	$ 1.20
2	1.22
3	1.23
4	1.25
5	1.27

Children

(3) Children under five (5) years of age accompanied by parent or guardian shall be carried free of charge. For each cancelled coupon shown thereon to have been issued in connection with the ticket covering a fare to a child five (5) years of age or over, as the passenger, the applicable per-coupon rate shall be:

(aa) fifty per cent (50%) of the current coupon rate applicable to adult fares under paragraph 3 (a) (2) hereof, if the child's fare is for a child passenger five (5) years of age or over, but under twelve (12) years of age; and

PLAINTIFF'S EXHIBIT 100 (Continued)

(bb) one hundred per cent (100%) of the current coupon rate applicable to adult fares under paragraph 3 (a) (2) hereof, if the child's fare is for a child passenger twelve (12) years of age or over.

Special Fare Coupons

(4) The applicable per-coupon rate for each cancelled coupon shall not be changed without mutual consent of Transfer and the Terminal Lines, to give effect to the fact either that

(aa) the transportation to which such coupon related covers a group passenger fare rate for the through service involved which is less than the applicable regular passenger fare for the same through service; or

(bb) the passenger to whom such cancelled coupon relates was traveling under special quotation to government agencies.

Additional Special Service Compensation

(5) In any case where, at the request of a Terminal Line, this service is rendered to a group of passengers involving the use of special baggage equipment to permit the members of the group to meet another train during such period, such as a baseball club, Transfer shall be entitled to receive from the requesting Terminal Line as additional compensation Five Dollars ($5.00) per hour for each special vehicle for baggage transfer used.

(b) Transfer shall be entitled to receive for each cancelled coupon delivered by it to the outgoing steamship line shown thereon serving the outgoing dock, and the steamship line handling the passenger from the outgoing dock shall be obligated to make payment to Transfer therefor, in accordance with the same schedule of charges specified in paragraph 3 (a) above applicable between Transfer and the applicable outgoing Terminal Line for similar service to the outgoing station.

4. The Passenger and Hbaggage Transfer Service shall commence when the arriving passenger presents himself and his Hbaggage to Transfer for transportation by Transfer, and shall terminate when such passenger is delivered to his

PLAINTIFF'S EXHIBIT 100 (Continued)

outgoing station or outgoing dock and his baggage is delivered to him.

Baggage Car Baggage Transfer Service

5. Transfer agrees to furnish and perform the following services (hereinafter referred to as "Baggage Car Baggage Transfer Service"):

(a) Transfer's services with respect to such Baggage Car Baggage Transfer Service shall be to perform during the normal working day established under paragraph 6 (c) hereof, the following services:

(1) To check, bill and manifest (hereinafter referred to as "clerical operations") in the baggage room of each incoming Terminal Line, all incoming baggage articles which that Terminal Line makes available for that purpose (hereinafter referred to as "Unserviced Baggage") to Transfer at a designated space in the baggage room of that Terminal Line commonly known as the Baggage Dock.

(2) To load on its own trailer at the baggage room all such Unserviced Baggage on which such clerical operations had been so performed (hereinafter referred to as "Serviced Baggage") by its employee or employees.

(3) To transport these loaded trailers from the baggage room of the incoming station to the baggage room of the designated outgoing station and there unload them.

(4) To transport these loaded trailers to the steamer docks of the designated steamship line and there unload and deliver the baggage to the said steamship line.

(5) To perform at the steamer dock of each incoming steamship line clerical operations with respect to Unserviced Baggage, as defined above, which that steamship line makes available to Transfer for that purpose, and there to load the Serviced Baggage on its trailers and to transport these loaded trailers therefrom to the baggage room of the designated outgoing station and there unload them.

6. Transfer shall perform the said Baggage Car Baggage Transfer Service in accordance with the following:

PLAINTIFF'S EXHIBIT 100 (Continued)

(a) Checked baggage covered by this service shall include all such items transported under check for a passenger.

(b) Transfer shall furnish and operate a sufficient number of vehicles suitable to perform the service hereunder.

(c) Transfer shall perform all operations hereunder on a seven (7) day per week basis between the hours of 8:00 A.M. and 5:00 P.M. CST of the same day (hereinabove and hereinafter referred to as "working day") to permit four (4) baggage transfers each day from each terminal station.

(d) Human remains, as defined in applicable tariffs, shall be transported from the baggage room of the requesting incoming Terminal Line to the baggage room of the outgoing station; and for that purpose Transfer shall use passenger equipment or its trailers specially adapted for such use, or other suitable equipment.

7. Transfer shall be entitled to receive compensation computed in accordance with the following schedule, from the applicable outgoing Terminal Line or outgoing steamship line, as the case may be, for services performed by it under the Baggage Car Baggage Transfer Service:

SCHEDULE OF CHARGES

(a) Checked baggage, as defined in paragraph 6 (a) above:

(1) In any case where Transfer has received payment from the outgoing Terminal Line for a cancelled coupon under paragraph 3 (a) hereof, such payment shall be treated by that Terminal Line and by Transfer as payment to Transfer by such Terminal Line for Transfer's services rendered to it under the Baggage Car Baggage Transfer Service with respect to the checked baggage applicable to the through ticket of which the cancelled coupon was a part.

(2) In any case other than paragraph 7 (a) (1) hereof, the charge shall be an amount equal to the amount which Transfer is then currently entitled to receive for each cancelled coupon applicable to the through ticket of which the cancelled coupon was a part.

(3) Human remains moving on regular railroad tickets: two (2) coupons plus $5.10.

PLAINTIFF'S EXHIBIT 100 (Continued)

(4) Human remains moving on tickets exchanged for Government Transportation Requests will be handled on the basis of two (2) coupons, this to include transfer of escort, so long as the present arrangement for such movement of human remains remains unchanged.

(b) Transfer shall be entitled to receive compensation from the applicable outgoing steamship line for services performed by it under the Baggage Car Baggage Transfer Service computed in accordance with the same schedule set forth in paragraph 7 (a) above applicable to each outgoing Terminal Line for the corresponding service.

Special Baggage Transfer Service

8. Transfer agrees to furnish and perform the following services (hereinafter collectively referred to as "Special Baggage Transfer Service"):

(a) Subject to the conditions specified in paragraph 8 (b) (3) hereof, to accept Hbaggage delivered by a passenger to Transfer's agent at incoming station for delivery to the parcel room of a designated outgoing station (hereinafter referred to as "PA Service").

(b) Transfer shall furnish and perform the Special Baggage Transfer Service in accordance with the following:

(1) The time schedule determined and established for the Passenger and Hbaggage Transfer Service pursuant to paragraph 2 (a) hereof shall constitute also the time schedule for the Special Baggage Transfer Service.

(2) In carrying on its operations under this Special Baggage Transfer Service, Transfer may use any vehicle or vehicles used in, or suitable for, any other service rendered by Transfer under this agreement, or any other vehicle suitable for the Special Baggage Transfer Service.

(3) PA Service baggage will be accepted for service hereunder for delivery to the outgoing station upon the presentation to Transfer of applicable coupon, plus the payment of 25¢ per piece of baggage, plus regular applicable parcel room charge for 24-hour

service prevailing at the outgoing station. Such service will be available for all passengers up to three hours before scheduled departure of train from outgoing station. PA Service baggage of passengers requesting this service with delivery time of less than the three-hour period, may be accepted by Transfer in accordance with the above upon such conditions of acceptance as Transfer and the passenger may agree upon.

(4) Transfer shall obtain revenues for such services by billing in the usual manner to the outgoing Terminal Line for the coupon involved, and shall retain for itself 25¢ for each piece of baggage and shall remit to the outgoing station parcel room at time of delivery, charges collected for such service.

(5) The Special Baggage Transfer Service commences when the baggage involved therein is received by Transfer's agent at the incoming station; and such service terminates when such baggage is delivered to the parcel room of the outgoing station.

Baggage Pickup and Delivery Service

9. Transfer agrees to furnish and perform the following services (hereinafter collectively referred to as "Baggage Pickup and Delivery Service"), within the terminal area:

(a) To transport from any point in the terminal area to the unloading platform located in any outgoing station baggage of passenger intended for transport as checked baggage.

(b) To transport any incoming baggage of an incoming passenger from any incoming station to any destination in the terminal area.

(c) Transfer shall furnish and perform the Baggage Pickup and Delivery Service in accordance with the following:

(1) The normal working day determined and established for the Baggage Car Baggage Transfer Service pursuant to paragraph 6 (c) hereof shall constitute also the normal working day for the Baggage Pickup and Delivery Service.

(2) In carrying out its operations under this service, Transfer may use any vehicle or vehicles used in, or suitable for, any other service rendered by Transfer under this Agreement, or

PLAINTIFF'S EXHIBIT 100 (Continued)

any other vehicle suitable for the Baggage Pickup and Delivery Service.

(3) Outgoing baggage will be accepted by Transfer from the passenger and incoming baggage will be accepted by Transfer from the incoming Terminal Line in accordance with the applicable tariffs.

(d) Transfer shall be entitled to receive compensation computed in accordance with the following schedule for services rendered by it under the Baggage Pickup and Delivery Service, payment for which will be received by Transfer in accordance with paragraphs (d) (1), (2), and (3) hereunder:

(1) For incoming baggage delivered by Transfer to the designated address which was forwarded on prepaid delivery check issued by the originating carrier, Transfer shall be entitled to receive compensation for such service from the incoming Terminal Line in an amount equal to the applicable tariff charges for such service.

(2) For outgoing baggage delivered by Transfer to the outgoing station, Transfer shall be entitled to retain as its compensation for such service an amount equal to the applicable tariff charge for such service collected by Transfer from the passenger checking such baggage.

(3) Where the incoming baggage delivered by Transfer has been forwarded under collect delivery check, Transfer shall make collection for the account of the incoming Terminal Line of the applicable tariff charge upon making delivery of such baggage at the address of the incoming passenger and shall retain such charges as compensation for its services. Where the outgoing baggage delivered by Transfer to the outgoing station is forwarded under prepaid delivery check, Transfer shall make collection of the applicable tariff charge upon acceptance of the baggage from the passenger and shall retain therefrom the portion of such charge applicable under the tariff to the movement from the place of pickup to the outgoing station as compensation

for its services and shall deliver the balance of the collection to the outgoing Terminal Line at the time of delivery of the baggage to such Terminal Line.

(e) When baggage is delivered to Transfer by the passenger for transportation to an outgoing station, Transfer shall deliver to the passenger the appropriate baggage check under applicable tariffs upon presentation of proper transportation.

(f) For incoming baggage, Baggage Pickup and Delivery Service shall commence when it is delivered to Transfer for delivery to the passenger, and shall terminate when such baggage is delivered to the address designated in the claim check and the passenger's duplicate claim check for such baggage or in the absence thereof a written receipt therefor is procured by Transfer. For outgoing baggage, such service shall commence when it is delivered to Transfer for transport to the designated outgoing station, and shall terminate when such baggage is delivered to the unloading platform of such station and the appropriate receipt is secured therefor.

General Provisions

10. Transfer agrees that:

(a) Transfer shall establish a radio control system and a central dispatch system at a centrally located site to provide control of movement and dispatch of vehicles used by it in the service under this Agreement, so as to fill the need for them at the time and place required for safe and efficient performance of the required service.

(b) Transfer shall establish a headquarters administration office in association with the central dispatch system office to provide suitable space for the administrative, financial and executive functions of Transfer.

(c) Commencing with the date when any transfer service under this Agreement shall start, and thereafter during the effective term of this Agreement, Transfer agrees to indemnify and save

PLAINTIFF'S EXHIBIT 100 (Continued)

harmless the Terminal Lines and/or Depot Companies, and all steamship lines which by separate agreement shall adopt the terms of this Agreement, their respective officers, employees and agents, and to assume liability imposed by law on any of the parties hereto, for death of, injury to, any persons whomsoever, including, but not limited to, officers, employees, agents, patrons and licensees of the parties hereto, and liability imposed by law on any of the parties hereto for loss of or damage or injury to property, including, but not limited to, that belonging to the parties hereto, arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the acts or omissions, negligent or otherwise, of Transfer, its agents, servants or employees, together with all liability for any expenses, attorneys' fees and costs incurred or sustained by any or all of the Terminal Lines and Depot Companies and steamship lines in connection therewith. Transfer agrees also to release and indemnify and save harmless the Terminal Lines and/or Depot Companies, their respective officers, employees and agents, from all liability imposed by law on them to Transfer, its officers, employees and agents, for deaths or injury to persons and loss of or damage to property (including attorneys' fees, costs and expenses incurred therewith), resulting from railroad operations at or near the area in which operations under this Agreement are conducted, unless such liability results from the sole negligence of the Terminal Lines and/or Depot Companies, their respective officers, employees or agents. Transfer, upon receipt of notice to that effect, shall assume the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section. Without in any manner restricting the extent of the obligations so assumed, Transfer agrees to procure for the additional protection of the Terminal Lines and the Depot Companies and steamship lines and keep in full force and effect at all times during the life of this Agreement

PLAINTIFF'S EXHIBIT 100 (Continued)

contractual-type insurance in form and with companies approved by the Terminal Lines and/or Depot Companies covering the risks and obligations assumed by it under this Agreement subject to all of the terms, conditions and exclusions of the basic policy contract not inconsistent with this Agreement, with full limits of One Million Dollars ($1,000,000) to be maintained at all times, except as is otherwise provided as to amounts in paragraph 10 (c-1). Such insurance shall contain a provision that it may not be cancelled without thirty (30) days' notice in writing to Earl B. Padrick, Agent for Terminal Lines and/or Depot Companies, and during such thirty (30) days Transfer shall arrange to secure substitute coverage entirely satisfactory to the Terminal Lines and/or Depot Companies. All applicable tariff provisions of Terminal Lines and/or Depot Companies and steamship lines shall inure to the benefit of Transfer.

(c-1) As respects cargo insurance coverage on baggage, Transfer agrees to procure for the additional protection of Terminal Lines and/or Depot Companies and steamship lines, and keep in full force and effect at all times during the life of this Agreement, cargo insurance on baggage and with companies approved by the Terminal Lines and/or Depot Companies covering the risks and obligations assumed by it under this Agreement subject to all of the terms, conditions and exclusions of the basic policy contract, not inconsistent with this Agreement with limits of Fifty Thousand Dollars ($50,000) per truck or vehicle and Two Hundred Fifty Thousand Dollars ($250,000) per catastrophe coverage to be maintained at all times. Such insurance shall contain a provision that it may not be cancelled without thirty (30) days' notice in writing to Earl B. Padrick, Agent of Terminal Lines and/or Depot Companies, and during such thirty (30) days Transfer shall arrange to secure substitute coverage entirely satisfactory to the Terminal Lines and/or Depot Companies. All applicable tariff provisions of Terminal Lines shall inure to the benefit of Transfer.

(d) Transfer shall carry Workmen's Compensation and Employers' Liability Insurance to cover Illinois State requirements.

(e) All employees of Transfer shall be covered by Indemnity Bond Insurance.

(f) Appropriate certificates covering all insurance herein shall be delivered by Transfer to the Terminal Lines, Depot Companies, and steamship lines.

(g) All equipment used in the service of Transfer shall be maintained in good repair and capable of performing the transportation service for which it was intended, with safety, efficiency, comfort and convenience to the passengers and to the personnel participating therein; and to the extent considered practical or advisable to construct and equip any semi-trailer with suitable electrical connection equipment and construction to permit connection with suitable wall plugs in the surrounding station area where the semi-trailer is placed, for lighting purposes, to permit operation within the interior of the semi-trailer without the use of tractor power.

(h) Transfer shall create and maintain practices and facilities, including preventative equipment and reserve equipment, to assure that Transfer's equipment used under this Agreement will be at all times in first-class condition and appearance, and that such equipment and the necessary personnel for rendering services therewith will be adequate in amount and number and will be available at the time and place required to provide efficient performance of the services intended for them under this Agreement.

(i) Transfer shall maintain the corporate name "Railroad Transfer Service, Inc."

(j) The color of equipment and any signs or designations appearing on such equipment will be subject to mutual agreement between Transfer and the Terminal Lines.

(k) A copy of the Annual Audit of Transfer as of the end of each of its fiscal years, certified by the certified public accountants

employed by Transfer in the regular course of its business, will be delivered by Transfer to the Agent of the Terminal Lines within thirty (30) days after such Annual Audit is completed.

(l) Transfer shall comply at all times with all laws, rules and regulations of governmental agencies having jurisdiction over it, and/or the services performed hereunder.

11. The parties hereto mutually agree that:

(a) Transfer shall not be liable for delays caused by accidents, breakdowns, bad conditions of road, snowstorms and other conditions beyond its control. Transfer does not guarantee to arrive at, or depart from, any terminal station or steamer dock at any specified time, other than to use its best efforts to carry out the operations required for the performance of its service under this Agreement so as not to prevent the departure of the passenger and his baggage at the departure time which he otherwise would meet.

(b) All forms of receipts, manifests and billings adopted for use in the services covered by this Agreement shall be approved by all parties to this Agreement.

(c) All services of Transfer under this Agreement shall commence on the earliest of the following dates (hereinafter referred to as "Service Commencement Date"): October 1, 1955, or a prior date specified in a written request by Agent of the Terminal Lines to Transfer to commence such service, which is delivered to Transfer at least twenty-four (24) hours before such specified date.

(d) The term of this Agreement shall be from the Service Commencement Date, as indicated in paragraph 11 (c), to and including September 30, 1960.

(e) During the effective term of this Agreement, the type and character of service, and the charge therefor as provided in this Agreement, shall not be affected in any manner in the event that at any time or times there shall be a decrease in the through passenger transportation service of the Terminal Lines, or in the required

passenger and baggage transfer service between terminal stations.

(f) Transfer shall employ and direct all persons performing any service hereunder and such persons shall be and remain its sole employees and subject to its sole control and direction, it being the intention of the parties that Transfer shall be and remain an independent contractor. Transfer agrees to conduct the work provided for herein in its name and agrees not to display the name of any of the Terminal Lines upon or about any of its vehicles.

(g) The procedure for the settlement of accounts shall be as determined by the parties before the commencement of the service.

12. The Terminal Lines and Depot Companies and steamship lines which by separate agreement adopt the terms of this Agreement agree that:

(a) The Terminal Lines and Depot Companies and steamship lines grant to Transfer, without charge on account thereof, the exclusive right and privilege insofar as the Terminal Lines and Depot Companies and steamship lines can legally do so, commencing with the Service Commencement Date and thereafter during the effective term of this Agreement, to solicit the transportation of passengers holding coupons in and around the terminal stations and steamer docks and on the surrounding premises.

(b) Commencing with the Service Commencement Date, and thereafter during the effective term of this Agreement, the Terminal Lines and Depot Companies and steamship lines will permit only equipment and signs of Transfer on their properties or on the terminal properties for the purposes outlined in this Agreement.

(c) Commencing with the Service Commencement Date and thereafter during the effective term of this Agreement, space in each terminal station will be allocated without charge to Transfer for use at the headquarters of its passenger agent and baggage agent.

13. It is the intention of the parties to, and the purpose of, this Agreement that:

(a) To the maximum extent possible, the entire field of passenger and baggage transportation as outlined in this Agreement between

PLAINTIFF'S EXHIBIT 100 (Continued)

all terminal stations and steamer docks where transfer between them is required in the through passenger transportation service of the Terminal Lines, shall be adequately and satisfactorily serviced and shall be serviced exclusively by Transfer; and

(b) The trade name "Railroad Transfer Service" as a baggage transport service, and Transfer as a baggage transport enterprise, shall be identified in the minds of all incoming and outgoing passengers of the Terminal Line using the terminal stations, as the sole and exclusive baggage transport service and enterprise on which the Terminal Lines rely, and in which they place their confidence for prompt, safe, satisfactory and economical baggage transportation service, whenever required between any terminal stations and steamer docks in Chicago. To carry out this intention, the parties agree that:

(1) In the event that any situation, other than those enumerated above in paragraph 8 hereof, shall arise which shall require the use of Transfer's Special Baggage Transfer Service or for the handling of which the use of such service is suitable, the Terminal Lines and Transfer shall co-operate to make use of such service of Transfer upon mutually satisfactory terms.

(2) To the maximum extent possible, the Terminal Lines:

(aa) will refer and recommend that passengers on all their incoming trains avail themselves of the baggage transfer service of Transfer to transport any incoming train baggage from any terminal station to any destination in the terminal area;

(bb) will refer and recommend any inquiries by any persons in the terminal area with respect to a transfer agency to transport to a departing terminal station baggage intended for transportation by the Terminal Lines using such terminal station to avail themselves of the baggage transfer service of Transfer.

(c) Transfer shall give first priority to the use of its vehicles assigned to Baggage Car Baggage Transfer Service for the transfer of baggage intended for transport through Transfer's services under this Agreement.

PLAINTIFF'S EXHIBIT 100 (Continued)

14. Transfer agrees that it will not assign this Agreement, or any rights under it, to any other person, firm or corporation, without the express written permission of the Terminal Lines and Depot Companies, or their Agent acting on their behalf.

In witness whereof the parties hereto have executed this Agreement as of the day and year first above written by their representatives and Transfer has affixed its corporate seal.

TERMINAL LINES AND DEPOT COMPANIES

By: E. B. PADRICK
Their Agent

RAILROAD TRANSFER SERVICE, INC.

By: J. L. KEESHIN
Its President

PLAINTIFF'S EXHIBIT 100 (Continued)

APPENDIX A

The "terminal area" shall consist of the area within the corporate limits of:

Alsip
Argo
Bedford Park
Bellwood
Berkeley
Berwyn
Blue Island
Broadview
Brookfield
Burnham
Calumet City
Calumet Park
Chicago
Chicago Heights
Chicago Ridge
Cicero
Crestwood
Des Plaines
Dixmoor
Dolton
East Hazel Crest
Elmwood Park
Evanston
Evergreen Park
Fairview (Cook County)
Flossmoor
Forest Park
Forest View
Franklin Park
Glencoe
Glenview
Golf
Harvey
Hazel Crest
Hillside
Hodgkins
Homewood
Hubbard Woods
Justice
Kenilworth
La Grange
La Grange Park
Lansing
Lincolnwood
Lyons
Markham
Maywood
McCook
Melrose Park
Midlothian
Morton Grove
Niles
Northbrook
Northfield
North Lake Village
North Riverside
Oak Forest
Oak Lawn
Oak Park
Palos Heights
Palos Park
Park Forest
Park Ridge
Phoenix (Cook County)
Rhodes
Riverdale
River Forest
River Grove
Riverside
Robbins
Schiller Park
Skokie
South Holland
Stickney
Stone Park
Summit (Cook County)
Techny
Thornton
Westchester
Western Springs
Willow Springs
Wilmette
Winnetka
Worth

PLAINTIFF'S EXHIBIT 101

PARMELEE TRANSPORTATION COMPANY

SUMMARY OF REVENUES AND EXPENSES
FROM
CHICAGO RAILROAD TRANSFER SERVICE OPERATIONS
By Years - Jan. 1, 1946, to Sep. 30, 1955

	1946	1947	1948	1949	1950	1951	1952
Revenues:							
Coupons,.....	$2,265,510.94	$1,557,348.11	$1,742,486.82	$1,528,293.78	$ 752,696.17	$1,619,135.49	$1,622,667.94
Cash Fares,.....	36,720.32	31,105.38	34,510.58	35,020.51	18,702.18	31,041.73	27,588.46
Baggage Receipts,...	147,064.57	160,191.17	152,583.21	138,531.50	67,638.06	122,525.15	127,619.55
Truck Rentals,.....	3,617.45	3,426.25	4,019.29	3,968.55	2,468.38	3,374.96	3,528.28
Total Revenues,...	$2,452,913.28	$1,752,070.91	$1,933,599.90	$1,705,814.34	$ 841,504.79	$1,776,077.33	$1,781,404.23
Expenses other than Depreciation:							
Vehicular Operation,	$ 584,707.67	$ 598,350.60	$ 709,350.59	$ 677,641.72	$ 387,827.39	$ 637,462.40	$ 668,133.19
Garage Operation,...	103,684.86	109,058.98	115,169.77	93,452.76	82,586.59	108,117.12	104,656.95
Vehicular Maintenance,	103,258.45	107,816.12	128,735.42	61,997.07	33,817.58	54,476.02	48,059.78
Traffic,.....	228,805.11	211,693.77	231,014.73	224,036.37	139,653.76	237,087.60	253,786.75
Insurance and Claims,	12,377.70	11,226.08	14,650.31	17,604.56	9,454.42	18,849.41	23,067.28
Administration:							
Direct (a),.....	145,163.13	138,818.09	152,832.96	140,579.77	123,146.47	167,601.51	184,590.15
Indirect (b),.....	13,951.94	10,938.24	13,841.99	8,128.75	4,216.40	7,649.20	6,930.80
Total Expenses other than Depreciation,...	$1,191,948.86	$1,187,901.88	$1,365,595.77	$1,223,441.10	$ 780,702.61	$1,231,243.26	$1,289,204.90
Net Revenue before considering Depreciation,.....	$1,260,964.42	$ 564,169.03	$ 568,004.13	$ 482,373.24	$ 60,802.18	$ 544,834.07	$ 492,199.33
Provision for Depreciation,.....	25,504.75	49,323.58	72,201.50	91,087.26	84,095.77	55,247.06	70,679.96
Net Revenue subject only to Income Tax,.	$1,235,459.67	$ 514,845.45	$ 495,802.63	$ 391,285.98	$ 23,293.59*	$ 489,587.01	$ 421,519.37

* - Negative figure.

a - Administrative expenses directly applicable to Chicago railroad transfer service operations.

b - Portion (appropriate to ratio of Total Revenues as shown above to Consolidated Gross Operating Revenue of this company and its subsidiaries) of administrative expenses applicable to the combined operations of this company and its subsidiary companies.

Exhibit 101 Defendants Exhibit (✓) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

PARMELEE TRANSPORTATION COMPANY

SUMMARY OF REVENUES AND EXPENSES
FROM
CHICAGO RAILROAD TRANSFER SERVICE OPERATIONS
By Years - Jan. 1, 1946, to Sep. 30, 1955

1948	1949	1950	1951	1952	1953	1954	1955 to Sep. 30
$1,742,486.82	$1,528,293.78	$ 752,696.17	$1,619,135.49	$1,622,667.94	$1,461,910.08	$1,540,874.63	$1,192,797.99
34,510.58	35,020.51	18,702.18	31,041.73	27,588.46	29,398.91	31,673.09	23,204.40
152,583.21	138,531.50	67,638.06	122,525.15	127,619.55	120,041.45	131,025.66	100,020.48
4,019.29	3,968.55	2,468.38	3,374.96	3,528.28	3,261.01	3,082.86	1,790.34
$1,933,599.90	$1,705,814.34	$ 841,504.79	$1,776,077.33	$1,781,404.23	$1,614,611.45	$1,706,656.24	$1,317,813.21
$ 709,350.59	$ 677,641.72	$ 387,827.39	$ 637,462.40	$ 668,133.19	$ 604,080.76	$ 565,611.25	$ 398,060.93
115,169.77	93,452.76	82,586.59	108,117.12	104,656.95	111,548.46	117,299.03	72,813.81
128,735.42	61,997.07	33,817.58	54,476.02	48,059.78	44,328.78	43,642.61	30,929.59
231,014.73	224,036.37	139,653.76	237,087.60	253,766.75	253,956.69	232,162.64	163,334.73
14,650.31	17,604.66	9,454.42	18,849.41	23,067.28	19,415.01	15,617.08	12,304.15
152,832.96	140,579.77	123,146.47	167,601.51	184,590.15	193,511.24	185,131.46	111,966.44
13,841.99	8,128.75	4,216.40	7,649.20	6,930.80	5,544.84	4,851.35	4,709.02
$1,365,595.77	$1,223,441.10	$ 780,702.61	$1,231,243.26	$1,289,204.90	$1,232,385.78	$1,164,315.42	$ 794,118.67
$ 568,004.13	$ 482,373.24	$ 60,802.18	$ 544,834.07	$ 492,199.33	$ 382,225.67	$ 542,340.82	$ 523,694.54
72,201.50	91,087.26	84,095.77	55,247.06	70,679.96	110,926.98	114,918.90	58,936.01
$ 495,802.63	$ 391,285.98	$ 23,293.59*	$ 489,587.01	$ 421,519.37	$ 271,298.69	$ 427,421.92	$ 464,758.53

hicago railroad transfer

as shown above to Con-
any and its subsidiaries)
ombined operations of

102 Defendants Exhibit
rict Court of the United States, BEFORE
District of Illinois, Eastern Division MINER, J.
Roy E. Fuller - Official Court Reporter

Re 3-3

RAILROAD TRANSFER SERVICE, INC.

SUMMARY OF INCOME
By Periods - Oct. 1, 1955, to Dec. 31, 1959

	Calendar Years 1959	1958	1957	Oct. 1,1955, to Dec.31,1956
rating Revenues,.....	$1,291,928.39	$1,317,293.96	$1,385,970.58	$1,859,254.80
rating Expenses other than Depreciation,..	1,005,690.69	984,949.34	1,101,647.68	1,536,818.85
Operating Revenue before considering epreciation,.....	$ 286,237.70	$ 332,344.62	$ 284,322.90	$ 322,435.95
vision for Depreciation,.....	93,254.62	87,413.59	99,853.32	117,968.38
Operating Revenue,.....	$ 192,983.08	$ 244,931.03	$ 184,469.58	$ 204,467.57
er Income:				
nterest Income,.....	2,880.77	1,176.28	646.30	-
apital Gains,.....	1,507.58	10,042.40	442.06	-
ss Income,.....	$ 197,371.43	$ 256,149.71	$ 185,557.94	$ 204,467.57
uctions from Income:				
nterest Expense,.....	-	179.52	2,409.65	13,118.39
apital Losses,.....	-	-	-	6,302.13
Income subject to Income Tax,.....	$ 197,371.43	$ 255,970.19	$ 183,148.29	$ 185,047.05
vision for Income Tax,.....	99,883.24	131,208.19	92,575.15	116,800.00
Income,.....	$ 97,488.19	$ 124,762.00	$ 90,573.14	$ 68,247.05

FILED
AUG 15 1960

PLAINTIFF'S EXHIBIT 102

PLAINTIFF'S EXHIBIT 103

CHICAGO DAILY NEWS
20 ★ Tues., May 3, '60

Parmelee Suit to Be Tossed Out

'No Monopoly' In Trucking Row

Federal Judge Julius H. Miner said Tuesday that he is going to throw out the $19.2 million anti-trust conspiracy suit filed by the Parmelee Transportation Co. over interstation railroad tranfer business here.

"This is not a question of monopoly," the judge said during the 10th day of the trial.

• • •

HOWEVER, Miner denied a motion for a directed verdict of dismissal by the defendants.

He said he wanted the trial to continue so that there will be a complete record of the case.

Parmelee attorneys rested their case Tuesday. The trial is expected to last another week.

• • •

PARMELEE filed the suit in 1956 against Hugh W. Cross, former Interstate Commerce Commission chairman; John L. Keeshin, Chicago trucking magnate; his Railroad Transfer Service; four railroad presidents; six railroads, and a passenger association.

It charged that a contract it held for more than a century to haul passengers and freight between Chicago railroad stations was switched "by conspiracy" to Keeshin's company.

Parmelee lost its 102-year franchise Oct. 1, 1955, and Railroad Transfer took over.

FILED
AUG 15 1960
AT ___ O'CLOCK ___
ROY H. JOHNSON

Plaintiffs Exhibit 103 Defendants Exhibit ( ) Mon. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division
BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

PLAINTIFF'S EXHIBIT 104

CHICAGO AMERICAN
May 3, 1960

Judge'll Throw Out Parmelee, Keeshin Case

Jurors in the Parmelee-Keeshin anti-trust suit will continue hearing testimony for another week, but they will just be going thru the motions.

Judge Julius H. Miner in federal District court said that when the jury returns its verdict, he will throw out the case. He made the statement to lawyers of both sides while the jury was excluded.

Miner said:

Triple Damages

"I will hold that this case does not belong in the family of anti-trust cases."

The trial has been in progress 10 days. Parmelee Transportation company seeks triple admages aggregating $19,200,000 from John L. Keeshin, his firm, Railroad Transfer company; six railroads, four railroad presidents, and Hugh W. Cross, former chairman of the Interstate Commerce commission.

Parmelee lost its 102 year old business of transporting railroad passengers and their luggage between Chicago rail terminals in 1955 to Keeshin's company.

Two Issue Case

In an innovation, Judge Miner broke the case down into two issues—whether the public was injured by the change, and whether the defendants operated a conspiracy to take away the business from Parmelee.

Only the first issue is being heard at present.

Parmelee is expected to appeal—when the jurors have finished going thru the motions.

FILED

AUG 15 1960

AT ..... O'CLOCK
ROY H. JOHNSON

Plaintiffs Exhibit 104 Defendants Exhibit ( ) Mex. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division No. ..... BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

16 C 3 B

PLAINTIFF'S EXHIBIT 105

CHICAGO DAILY TRIBUNE: WEDNESDAY, MAY 4, 196

SPTS - BUS - PAGE 6

Judge Says Keeshin Didn't Violate Anti-Trust Act

Federal Judge Julius H Miner said Tuesday that a transfer firm on trial in a $19,200,000 anti-trust suit in federal District court did not violate the anti-trust act when it contracted to haul passengers and luggage between Chicago train depots.

The judge said he would say so in an opinion to be written at the end of the trial in about a week and would dismiss the suit if a jury returns a verdict against the firm.

Seeks Triple Damages

The suit, brought by Parmelee Transportation company against Railroad Transfer company, owned by John L. Keeshin, charges that Keeshin conspired with railroad officials to take over the business handled by Parmelee for 102 years. Parmelee seeks triple damages for an alleged loss of $6,400,000.

The case has been on trial for 10 days. The judge's announcement came as attorneys for Parmelee rested their case Tuesday.

Judge Miner said his opinion would be made a part of the trial record in anticipation that his decision would be appealed. He said he was permitting the trial to continue so that each side can "have its say" on alleged public economic injury placed in the record.

Can Act Together

The judge said a recent opinion of the Supreme Court of the United States said railroads could act together in granting a contract without restraining trade in interstate commerce. He said Parmalee failed to show public economic injury.

Judge Miner pointed out that a virtual monopoly would be had by either firm having the contract in this case, so the question of monopoly was not an issue in the trial.

The suit is being tried under a "separation of issues" plan devised recently by Judge Miner. Under the procedure, the issue of liability is handled first and then, if it is determined there is liability, the issue of damage is taken up. The Parmelee suit marks the first attempt to use the procedure in litigation other than personal injury suits.

Plaintiff's Exhibit 105 Defendant's Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

PLAINTIFF'S EXHIBIT 106

CHICAGO SUN-TIMES, Wed., May 4, 1960 23

Judge Will Dismiss Suit By Parmelee

U.S. District Court Judge Julius H. Miner indicated Tuesday he would dismiss Parmelee Transportation Co.'s antitrust suit charging public economic injury.

Miner told attorneys in the dispute he would take such action regardless of what determination a jury hearing the case before him would make on the public injury issue—the only one involved in the proceedings.

Parmelee's suit for $19,200,- [illegible] treble damages is against the Railroad Transfer Service and its owner, John L. Keeshin, six railroads and four railroad presidents.

The suit charges the defendants conspired to give Keeshin's firm a contract in 1955 to transfer passengers between Chicago depots—a service formerly performed by Parmelee.

On expressing his intentions, Judge Miner asked Thomas C. McConnell, an attorney for Parmelee, whether he wished to concede that no evidence of public injury exists in the case and thus speed the hearing.

McConnell told the jurist:

"This is a very expensive proceeding. If the court tells us it is going to direct a verdict anyway, it might as well act now."

"I didn't say that," said Miner. "I said regardless of the (jury) verdict on the public injury issue, I will hold this case does not belong in the family of antitrust cases and should not be prosecuted."

McConnell asked:

"Why doesn't your honor hold that now and end it?"

"No, I can't," replied Miner.

"Then we cannot agree that we have no evidence of public injury," countered the attorney.

Miner then overruled a defense motion for a directed verdict "as of now," but said he would take the move under advisement.

FILED
AUG 15 1960
106
MINER, J.

PLAINTIFF'S EXHIBIT 107

COPY....

PARMELEE TRANSPORTATION COMPANY
300 North Desplaines St.
Chicago 6, Ill.

Plaintiffs Exhibit
Defendants Exhibit
( ) Id
( ) Re
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
BEFORE MINER.
Roy E. Fuller, Official Court Reporter

Morris Markin
Chairman of the Board

56C323

May 20, 1955

Mr S W Bone
Passenger Traffic Manager
New York Central System
LaSalle Street Station
Chicago, Illinois

AUG 15 1960

Dear Sid:

After reviewing the proposal presented yesterday, we hereby suggest the following amendment:

The base rate shall be established at $1.20. There shall be an increase of 1¢ for each 3¢ increase in the cost of labor. The maximum rates under this formula are as follows:

For the year commencing July 1, 1955 - $1.20
For the year commencing July 1, 1956 - 1.22
For the year commencing July 1, 1957 - 1.23
For the year commencing July 1, 1958 - 1.24
For the year commencing July 1, 1959 - 1.25
For the year commencing July 1, 1960 - 1.25

To date, Parmelee has served the railroads for 102 years with no written contract, only the railroads' verbal commitment. We are still ready to honor the verbal commitment of the railroads for the next five years as per our understanding, without a written contract unless the railroads desire to have such a contract.

Yours very truly,

/s/ M. Markin

MM:MS

Chairman of the Board

A346

PLAINTIFF'S EXHIBIT 108

Supplement No. 6 (Supplement No. 5, as amended hereby, continued in effect) to Grand Trunk Ry.-C. T. C. No. E-3848. N. Y. C. R. R.-C. T. C. No. 3780.	Supplement No. 6 (Supplement No. 5, as amended hereby, continues in effect) to	Ill. C. C. No. 1. I. R. C. No. 1. K. R. C. No. 2. M. P. S. C. No. 2. N. C. U. C. No. 1. P. S. C.-N. Y. No. 2. Ohio No. 1.	Supplement No. 6 (Supplement No. 5, as amended hereby, continues in effect) to	I. C. C. No. 4 P. S. C.-Md. No. 1. P. U. C.-N. J. No. 2. Pa. P. U. C. No. 1. V. C. C. No. P-1. P. S. C.-W. Va. No. 1.

Plaintiffs Exhibit 108 Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

MINER, J.

Roy E. Fuller - Official Court Reporter

56 C 323

TRUNK LINE-CENTRAL PASSENGER TARIFF BUREAU

Supplement No. 6
(Supplement No. 5, as amended hereby, continues in effect)
to

LOCAL, INTERDIVISION, AND JOINT BAGGAGE DELIVERY TARIFF B. D. No. 7

OF

STAMP HERE

DATE RECEIVED

RULES, REGULATIONS, AND RATES

GOVERNING

THROUGH CHECKING OF BAGGAGE

From Stations on Lines of the Issuing, Initial, and Participating Carriers Hereof

FOR

Delivery to Addresses at Places Named Herein

Issued February 4, 1958 **Effective March 8, 1958**

Departure from the terms of Rules 38 (a) and 38 (d) of Tariff Circular No. 18-A is authorized under Special Permission of the Interstate Commerce Commission No. 75624 of February 4, 1958.

Issued under special permission of the Public Service Commission of Maryland, Order No. 32215 of January 31, 1958.

ISSUING, INITIAL, AND PARTICIPATING CARRIERS
Are as shown on pages 2 and 3 of Tariff, as amended in Supplement No. 5

Acting under Powers of Attorney lawfully on file as indicated on pages 2 and 3 of tariff, as amended in Supplement No. 5

Issued by
A. J. WINKLER, Agent
One Park Ave., New York 16, N. Y.

File Index No. (Printed in U. S. A.) (7000) (76007)

PLAINTIFF'S EXHIBIT 108 (Continued)

BAGGAGE DELIVERY CHARGES

PLACES	Charge Per Piece	
	For Trunk	For Hand Baggage
ILLINOIS		
Page 5 of Tariff and Pages 2 and 3 of Supplement No. 5 — *Amend Chicago to read as follows:*		
⊡Chicago		
Zone 1:		
That area of Chicago, Illinois bounded on the north by North Avenue (1600); on the East by Lake Michigan; on the south by 14th Street (1400) and on the west by Halsted Street (800)	♦$2.75	♦$1.90
Zone 2:		
That area of Chicago, Illinois not included in Zone 1 and bounded on the north by Howard St. (7600); on the East by Lake Michigan; on the south by 63rd St. (6300) and on the west by Cicero Avenue	♦3.00	♦2.00
Zone 3:		
That area within the corporate boundaries of Chicago, Illinois not included in either Zone 1 or 2.		
To suburban points as follows:		
Berwyn		
Cicero		
Elmwood Park		
Evanston	♦$3.75	♦$2.25
Forest Park		
Franklin Park		
Lincolnwood		
Maywood		
Melrose Park		
Oak Park		
River Forest		
Riverside		
When baggage is checked to these suburban towns for delivery, checks must read Chicago followed by full address.		
Zone 4:		
To suburban points as follows:		
Bedford Park		
Bellwood		
Broadview		
Brookfield	♦$5.00	♦$3.00
Evergreen Park		
Forest View		
Glencoe		
(Chicago—Continued)		

PLACES	Charge Per Piece	
	For Trunk	For Hand Baggage
ILLINOIS—Continued		
⊡Chicago—Continued		
Zone 4:—Continued		
Glenview		
Golf		
Highland Park		
Hubbard Woods		
Kenilworth		
La Grange		
La Grange Park		
Lyons		
Morton Grove		
Niles		
Northfield	♦$5.00	♦$3.00
North Riverside		
Oak Lawn		
Park Ridge		
River Grove		
Skokie		
Westchester		
Western Springs		
Wilmette		
Winnetka		
When baggage is checked to these surburban towns for delivery, the checks must read Chicago followed by full address.		
MARYLAND		
Page 6 of Tariff— *Amend Baltimore to read as follows:*		
Baltimore		
Zone 1:		
Hotels, business district and central residential section embracing up to Falls Road and 26th Street, north, east to Central Avenue, south to Race St. and west of Carey Street	♦3.00	♦1.90
Zone 2:		
East of Central Avenue to Highland Avenue; west of Carey Street to Hilton Street; north from the 2500 Block to Belvedere Avenue; west on Hamilton Avenue, east; south of Fort Avenue to 9th Street, Brooklyn	♦3.50	♦2.50
Zone 3:		
All other communities, including Colgate, Dundalk, Turner Station, Water Edge, Parkville, Pikesville, Catonsville, Irvington-Edmondson Development, Rogers Forge, Anesley, Dickeysville, Brooklyn Park and Curtis Bay	♦4.00	♦3.00

♦ Increase.

⊡ All trunks or pieces of hand baggage weighing in excess of 150 pounds each are subject to an additional charge of $1.50 each for special handling.

PLAINTIFF'S EXHIBIT 109

COMPARISON OF BAGGAGE TRANSFER RATES AS OF OCTOBER 1, 1955

SCHEDULE OF CHARGES BY PARMELEE TRANSPORTATION COMPANY

Defendants Exhibit 109
District Court of the United States, Northern District of Illinois, Eastern Division
No. 56 C 373
Roy E. Fuller, Official Court Reporter

	FOR ANY TRUNK	FOR HAND BAGGAGE
Between RR Station and any city address	$2.25	$1.50
* * *		
Between RR Stations in Chicago and following suburbs:		
Bellwood, Berwyn, Cicero, Elmwood Park, Evanston, Evergreen Park, Forest Park, Franklin Park, Glencoe, Glenview, Golf, Hubbard Woods, Kenilworth, Lincolnwood, Maywood, Melrose Park, Morton Grove, Niles, Northfield, Oaklawn, Oak Park, Park Ridge, River Forest, River Grove, Riverside, Skokie, Wilmette, Winnetka	$3.00	$1.75

FILED
AUG 15 1960
AT CICERO

SCHEDULE OF CHARGES BY RR TRANSFER SERVICE INC.

	TRUNKS UP TO 50 CUBIC FEET	TRUNKS OVER 50 CUBIC FEET	FOR HAND BAGGAGE
ZONE 1 - between RR Stations and addresses, bounded by Howard St; Cicero Ave; and 63rd Street	$2.25	$2.50	$1.50
ZONE 2 - Chicago, except as shown in Zone 1 above and to the following suburban points: Bellwood, Berwyn, Cicero, Elmwood Park, Evanston, Evergreen Park, Forest Park, Franklin Park, Glencoe, Glenview, Golf, Hubbard Woods, Kenilworth, Lincolnwood, Maywood, Melrose Park, Morton Grove, Niles, Northfield, Oaklawn, Oak Park, Park Ridge, River Forest, River Grove, Riverside, Skokie, Wilmette, Winnetka	$3.00	$3.50	$1.75
Zone 3 - Chicago to other suburban towns: Alsip, Argo, Bedford Park, Berkeley, Blue Island, Broadview, Brookfield, Burnham, Calumet City, Calumet Park, Chicago Heights, Chicago Ridge, Crestwood, Des Plaines, Dixmoor, Dolton, East Hazel Crest, Fairview, Flossmoor, Forest View, Harvey, Hazel Crest, Hillside, Hodgkins, Homewood, Justice, La Grange, La Grange Park, Lansing, Lyons, Markham, McCook, Midlothian, Northbrook, North Lake Village, North Riverside, Oak Forest, Palos Heights, Palos Park, Park Forest, Phoenix, Rhodes, Riverdale, Robbins, Schiller Park, South Holland, Stickney, Stone Park, Summit, Techny, Thornton, Westchester, Western Springs, Willow Springs, Worth	$4.00	$4.50	$2.25

PLAINTIFF'S EXHIBIT 110

ONLY ONE SUPPLEMENT TO THIS TARIFF MAY BE IN EFFECT AT ANY TIME.

I.C.C. No. 5501

ILL. C. C. No. 2052

Plaintiffs Exhibit 110 Defendants Exhibit ( ) Identified ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.

No.

Roy E. Fuller - Official Court Reporter

SEP 1955

P. I.

LOCAL, INTERDIVISION, AND JOINT BAGGAGE PICKUP TARIFF

AUG 15

B.P.U. No. 1

OF

RULES, REGULATIONS, AND RATES

GOVERNING

THROUGH CHECKING OF BAGGAGE

FROM ADDRESSES AT PLACES NAMED HEREIN

FOR

DELIVERY TO STATIONS ON LINES OF THE

ISSUING AND PARTICIPATING CARRIERS HEREIN

ISSUED SEPTEMBER 19, 1955 EFFECTIVE OCTOBER 20, 1955

ISSUED BY
E. B. PADDOCK, AGENT,
736 UNION STATION
516 WEST JACKSON BLVD.,
CHICAGO 6, ILL.

ACTING UNDER POWERS OF ATTORNEY ON FILE WITH THE INTERSTATE COMMERCE COMMISSION AND ILLINOIS COMMERCE COMMISSION.

(1000)-

PLAINTIFF'S EXHIBIT 110 (Continued)

RULES AND REGULATIONS

RULE 1. BAGGAGE PICKUP CHARGES

UPON PRESENTATION OF PROPER TRANSPORTATION, BAGGAGE MAY BE FORWARDED FROM ANY ADDRESS IN THE PLACES SHOWN IN RULE 3 UNDER PREPAID DELIVERY CHECKS TO STATIONS ON THE LINES OF THE ISSUING AND PARTICIPATING CARRIERS AT CHARGES SHOWN IN RULE 3.

TRANSPORTATION OF BAGGAGE TO POINTS ON LINES OF PARTICIPATING CARRIERS HEREIN WILL BE SUBJECT TO RULES, REGULATIONS AND CHARGES SHOWN IN WESTERN BAGGAGE TARIFF NO. 25-15, E.B. PADRICK'S I.C.C. NO. 5476, ILL. C.C. NO. 2047 AND LOCAL, INTERDIVISION AND JOINT BAGGAGE TARIFF B.G. NO. 11, V. ARNOLD'S I.C.C. NO. 324, ILL. C.C. 83, A.J.WINKLER, ALTERNATE AGENT, SUPPLEMENTS THERETO OR NEW ISSUES THEREOF.

RULE 2. DEFINITION OF TRUNKS AND HAND BAGGAGE

TRUNKS.—THE RATES QUOTED HEREIN UNDER THE HEADING "TRUNK" INCLUDE, IN ADDITION TO TRUNKS, BAGGAGE SUCH AS HAMPERS, PORTMANTEAUS, CASES, LARGE BOXES, BICYCLES, BABY CARRIAGES, GO-CARTS, STEAMER CHAIRS, INVALID CHAIRS, TOOL CHESTS, DOGS IN CRATES,

HAND-BAGGAGE.—THE RATES QUOTED HEREIN UNDER THE HEADING "HAND BAGGAGE" INCLUDE ARTICLES WHICH MAY BE CONVENIENTLY CARRIED BY HAND, SUCH AS HAND BAGS, DUFFEL BAGS, SUITCASES, VALISES, STEAMER RUGS, GUN CASES, FOLDING GO-CARTS, GOLF BAGS.

RULE 3. BAGGAGE PICK-UP CHARGES

PLACES	CHARGE PER PIECE		
	FOR TRUNK EXCEEDING 50 CUBIC FEET	FOR TRUNK NOT EXCEEDING 50 CUBIC FEET	FOR HAND BAGGAGE
ILLINOIS			
CHICAGO - ZONE 1 (SEE NOTE 1)	$ 2.50	$ 2.25	$ 1.50
CHICAGO - ZONE 2 (SEE NOTE 2)	3.50	3.00	1.75
SUBURBAN POINTS AS FOLLOWS:			
ALSIP			
ARGO	4.50	4.00	2.25
BEDFORD PARK			
BELLWOOD	3.50	3.00	1.75
BERKELEY	4.50	4.00	2.25
BERWYN	3.50	3.00	1.75
BLUE ISLAND			
BROADVIEW			
BROOKFIELD	4.50	4.00	2.25
BURNHAM			
CALUMET CITY			
CALUMET PARK			
CHICAGO HEIGHTS			
CHICAGO RIDGE			
CICERO	3.50	3.00	1.75
CRESTWOOD			
DES PLAINES			
DIXMOOR	4.50	4.00	2.25
DOLTON			
EAST HAZEL CREST			
ELMWOOD PARK			
EVANSTON	3.50	3.00	1.75
EVERGREEN PARK			
FAIRVIEW (COOK CO.)			
FLOSSMOOR	4.50	4.00	2.25
FOREST PARK	3.50	3.00	1.75
FOREST VIEW	4.50	4.00	2.25
FRANKLIN PARK			
GLENCOE			
GLENVIEW	3.50	3.00	1.75
GOLF			
HARVEY			
HAZEL CREST			
HILLSIDE			
HODGKINS	4.50	4.00	2.25
HOMEWOOD			

CONCLUDED ON NEXT PAGE

NOTE 1. CHICAGO, ZONE 1, IS RESTRICTED TO ONLY THAT PORTION BOUNDED ON THE NORTH, BY THE SOUTH SIDE OF HOWARD STREET; ON THE WEST, BY THE EAST SIDE OF CICERO AVENUE; ON THE SOUTH, BY THE NORTH SIDE OF SIXTY-THIRD STREET; ON THE EAST, BY LAKE MICHIGAN.
NOTE 2. CHICAGO, ZONE 2, IS ONLY THAT PORTION OF CHICAGO NOT SHOWN IN ZONE 1.

PLAINTIFF'S EXHIBIT 117

140-D-A

ERIE RAILROAD COMPANY

R. E. TOWNS
ASSISTANT GENERAL PASSENGER AGENT
R. A. JOHNSON
CITY PASSENGER AGENT
C. A. CRIM, JR.
TRAVELING PASSENGER AGENT

PASSENGER TRAFFIC DEPARTMENT

TELEPHONE HARRISON 7-4100
327 S. LA SALLE ST.
CHICAGO 4, ILL.

Plaintiff's Exhibit 117 Defendants Exhibit (Iden. Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller - Official Court Reporter

BEFORE MINER, J.

May 22, 1956.

RECEIVED MAY 23 1956 T-CPA WPA

Mr. E.B. Padrick, Chairman
Western Passenger Association
Room 436, Union Station
West Jackson Boulevard
Chicago, Illinois.

Dear Mr. Padrick:

You no doubt have a copy of Mr. Dean's report attached of the meeting of May 18th with Railroad Transfer Service about baggage transfer, pick up and delivery, in which he points out that our line and the Nickel Plate were critical of the service as it is now rendered.

The Railroad Transfer Service people brought to the meeting a former employee of Parmelee who stated that twice a day pick up had been discontinued some six or seven years ago by Parmelee and apparently they felt this answered the complaints and justified their present practices. It was pointed out that complaints were non-existent when Parmelee performed the service and certainly were not made up or fancied since Railroad Transfer had taken over.

After a considerable amount of questioning the former Parmelee employee admitted that more vehicles were in pick up service than now, that pick ups were made as near the time requested as possible and never more than two hours after the time designated. He also stated that Parmelee lost a lot of money in performing the service. Their lawsuit would indicate that they are willing to lose it again

It was our thought that Railroad Transfer was to provide the same services we had previously had and that their bid took into consideration all phases of the operation. Apparently it did not.

The steamship and travel agents who complain to us about the service hold us as being responsible and ask why we don't have the service performed by a suitable company so the poor service is a reflection on the carriers and not Railroad Transfer Service. We would be very happy with pick ups not later than two hours after the designated time.

Yours very truly,

R. E. Towns

Assistant General Passenger Agent

PLAINTIFF'S EXHIBIT 120

OFFICE MEMORANDUM

SUBJECT Air Conditioning on Rail Transfer Cars DATE 6/16/56

TO	FROM
Mr. C. E. Rheintgen	D. Weiner

Sat. 6-16-56

Observation made 2:45 P.M.
Herald American thermometer reading 86 degrees.
The humidity was 63%. This information received from weather bureau, WE. 4-1212.

AIR CONDITIONING NOT WORKING.	DRIVER'S NAME
# 4	O'Malley
30	Garaino
13	Unknown
33	Scott
44	Unknown
24	Grandinoto
64 - 10 passenger	Unknown
21	Steenholdt
25	Cozzi
28	Goodman
36	Unknown
61 - 10 passenger	"
43	Ambroise
2	Dargis
65 - 10 passenger	Unknown
5	"

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AIR CONDITIONING WORKING	
#22	Adamaitis
34 SUPERVISOR	Toppel

Plaintiffs Exhibit Defendants Exhibit ( ) Mem. Mag'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

~~PE~~ 323

PLAINTIFF'S EXHIBIT 121

OFFICE MEMORANDUM

SUBJECT Air conditioning in Railroad Transfer Limousines

DATE 8-4-56

TO	FROM
C. E. Rheintgen	D. Weiner

FILED

AUG 15 1960

AT O'CLOCK

ROY H. SAMUELSON

Time: 1:30 P.M. Saturday, Aug. 4, 1956
Temperature - 98% - Reading obtained at Herald-American Building.

Plaintiff's Exhibit 121 Defendant's Exhibit Identified Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MINER, J.
No.
Roy E. Fuller - Official Court Reporter

The following report indicates that Railroad Transfer is not using the air conditioning units in their limos. On this day, I asked driver Gordon who operates Bus #91, why he has all of his windows open. Why not turn on the air conditioner. He said "What's the use, all you get is hot air." All the boys keep the windows open, because very few of them work. This statement coincides with the one driver Cozzi made to me on Thursday 8-2-56. He told me that he drove Mr. J. L. Keeshin over to 35th and Racine and en route Mr. Keeshin wanted to know why he does not have the air conditioning unit on. Driver Cozzi told him that all you get is hot air. Mr. Keeshin told him to turn it on and sure enough all he could get was hot air. Mr. Keeshin told him to take the car over to Litsinger's at once and that he was going to call Litsinger. Later in the day I saw Cozzi again and he told me that there was a general order sent out over their radio system that all drivers with defective air conditioning units must drive over to Litsinger and have them fixed. Two days after this incident I made the following observation.

At the I.C. between 1:40 P.M. to 2:20 P.M.

Windows open	License No.	Driver
7	742007	Unknown
2	742002	Dargis
90 - 21 passenger	F9597	Studzynski
91 - " "	F9596	Gordon
42	742042	O'Brien
1	742001	Prendergast
36	742036	Lombardo
09	742009	Unknown
64 - 10 passenger	B46-764	McKeon
20	742020	Unknown
25	742025	Buenovontiunta
9	742009	Unknown
11	742011	Unknown
5	742005	Unknown
63	B46-763	Unknown
14	742014	Unknown

At B&O at 2:33 P.M.

4	742004	Winsberg Jr.
43	742043	Ambroise

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PLAINTIFF'S EXHIBIT 121 (Continued)

P. S. K. 46 SSM 10-51

OFFICE MEMORANDUM

SUBJECT

Page 2

DATE 8-4-56

TO	FROM
C.E.Rheintgen	D.Weiner

Windows Open	License No.	Driver
At Harrison & Franklin - 2:35 P.M.		
10	742010	Robbins
At Union Station at 2:43 P.M.		
33	742033	Unknown
26	742026	Unknown
8	742008	Unknown
30	742030	Garino
36	742036	Unknown

D. Weiner

FILED

AUG 15 1960

PLAINTIFF'S EXHIBIT 122

OFFICE MEMORANDUM

SUBJECT Air Conditioning in Rail Transfer Cars DATE 6-18-57

TO F. A. Krock AT ROY H. O'CLOCK

FROM D. Weiner

Plaintiffs Exhibit 122 Defendants Exhibit ( ) Identified ( ) Rec'd

In the District Court of the United States, Northern District of Illinois, Eastern Division No.

BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

56 C 323

Weather: 81 Degrees
88% Humidity

All cars on this list had their windows open.

LIMO. NO.	TIME	PLACE	DRIVER
3	8:55 A.M.	Wells & Harrison	Cooper
22	8:58 P.M.	Sherman & Harrison	Adamaitis
93	9:05 A.M.	Dearborn Station	Fyjolek
34	9:05 A.M.	Dearborn Station	Prendergast
32	9:05 A.M.	Dearborn Station	Wesbon
16	9:05 A.M.	Dearborn Station	Goodman
65	9:10 A.M.	Harrison & Clark	Kendricks
24	9:30 A.M.	Harrison & Clark	Giandinoto
29	9:32 A.M.	Harrison & Sherman	unknown
36	9:35 A.M.	Dearborn Station	Halloran
23	9:45 A.M.	Illinois Central	Berlandi
18	9:45 A.M.	Illinois Central	Scott
48	9:55 A.M.	Illinois Central	Settipanni
35	9:55 A.M.	Illinois Central	Sottosanto
47	9:55 A.M.	Illinois Central	Lambardo
92	10:35 A.M.	Illinois Central	Sicilia
66	1:45 P.M.	Illinois Central	S. Busch
62	1:50 P.M.	Illinois Central	Moloney
14	2:25 P.M.	Illinois Centra	Abbroise
4	2:25 P.M.	Illinois Central	Petersen
2	2:45 P.M.	Illinois Central	Dargis

Continued on following page

P. S. K. 68 50M 6-52

PLAINTIFF'S EXHIBIT 123

OFFICE MEMORANDUM

SUBJECT Air Conditioning in Rail Road Transfers Cars DATE 6-21-57

TO	FROM
F. A. Krock	D. Weiner

Friday

Official Temperature report 2:00 P.M.

87 Degrees
39% Humidity

LIMO. NO.	TIME	PLACE	DRIVER	WINDOWS OPEN
91	2:15 P.M.	Illinois Central	unknown	Yes
31	2:15 P.M.	Illinois Central	Petersen	Yes
66	2:15 P.M.	Illinois Central	S. Busch	Yes
29	2:15 P.M.	Illinois Central	Parmelee	Yes
14	2:15 P.M.	Illinois Central	Scott	Yes
12	2:25 P.M.	Illinois Central	E. Busch	Yes
3	2:25 P.M.	Illinois Central	Cooper	Yes
47	2:25 P.M.	Illinois Central	Holmes	Yes
17	2:25 P.M.	Illinois Central	Berg	Yes
34	2:35 P.M.	Illinois Central	Lombardo	Yes
10	2:35 P.M.	Illinois Central	Robbins	Yes
23	2:35 P.M.	Illinois Central	Gentile	Yes
16	2:40 P.M.	Illinois Central	unknown	Yes

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FILED

Plaintiff's Exhibit 123 Defendant's Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
MOORE MILLER, J.
Roy E. Fuller, Official Court Reporter

P. S. K. 66 50M 8-52

PLAINTIFF'S EXHIBIT 124

OFFICE MEMORANDUM

SUBJECT Air Conditioning in Rail Transfer Cars DATE 7-2-57

TO	FROM
F. A. Krock	D. Wriner

Tuesday

Official Temperature Report 1:00 P.M.

86 Degrees
46% Humidity

Air Conditioning not in use.

BUS NO.	DRIVER	TIME	PLACE	WINDOWS OPEN
22	unknown	1:15 P.M.	C. &. NW	Yes
8	Winsberg	1:20 P.M.	Union	Yes
4	Pedersen	1:20 P.M.	Union	Yes
24	Prendergast	1:30 P.M.	Dearborn	Yes
31	Dargis	1:35 P.M.	Illinois Central	Yes
9	Cozzi	1:35 P.M.	Illinois Central	Yes
62	O'Mally	1:35 P.M.	Illinois Central	Yes
23	unknown	1:35 P.M.	Illinois Central	Yes
90	unknown	1:35 P.M.	Illinois Central	Yes
5	unknown	1:35 P.M.	Illinois Central	Yes
44	unknown	1:35 P.M.	Illinois Central	Yes
46	Parmelee	1:35 P.M.	Illinois Central	Yes
12	Settepani	1:45 P.M.	Illinois Central	Yes
22	Meenaghan	1:45 P.M.	Illinois Central	Yes
91	Sottosanto	1:45 P.M.	Illinois Central	Yes
3	Cooper	2:15 P.M.	Illinois Central	Yes
16	Goodmen	2:50 P.M.	LaSalle & Polk St.	Yes

FILED
AUG 15 1960
AT O'CLOCK
JOHN H. ...

17

Plaintiff's Exhibit 124 Defendant's Exhibit Ident. Recd.

In the District Court of the United States, ... Northern District of ... Eastern Division ...

J6C3v3

P. S. K. 58 SOM 8-52

PLAINTIFF'S EXHIBIT 125

OFFICE MEMORANDUM

SUBJECT Air Conditioning DATE 7-11-57

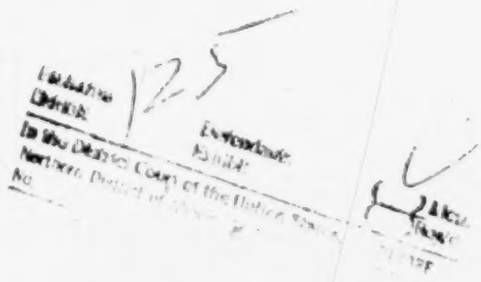
TO	FROM
F. A. Krock	D. Weiner

Official weather report 1:00 P.M.

89 Degrees
35% Humidity

LIMO. NO.	TIME	PLACE	DRIVER	LOADED	EMPTY	WINDOWS OPEN
8	1:15 P.M.	Jackson & Canal	Halloran	Yes		Yes
7	1:28 P.M.	LaSalle Station	Jones		Yes	Yes
44	1:45 P.M.	Illinois Central	Meenaghan	Yes		Yes
14	1:45 P.M.	Illinois Central	Ambroise	Yes		Yes
94	2:00 P.M.	Illinois Central	unknown		Yes	Yes
16	2:00 P.M.	Illinois Central	Goodmen		Yes	Yes
21	2:00 P.M.	Illinois Central	O'Brien		Yes	Yes
91 Bus	2:20 P.M.	Roosevelt & Clark	Studzinski	Yes		Yes
29	2:28 P.M.	LaSalle & Van Buren	Giandinoto	Yes		Yes
65	2:33 P.M.	LaSalle & Harrison	unknown	Yes		Yes
44	2:40 P.M.	Wacker & Van Buren	Meenaghan	Yes		Yes
5	2:40 P.M.	Wacker & Van Buren	Cenzi	Yes		Yes
12	2:40 P.M.	Wacker & Van Buren	E. Busch	Yes		Yes
93 Bus	2:43 P.M.	Adams & Wacker	Guarino	Yes		Windows & Front D

14



PLAINTIFF'S EXHIBIT 126

P. S. K. 66 60M 6-52

OFFICE MEMORANDUM -

SUBJECT Air Conditioning in Rail Road Transfer Limousines DATE 7-19-57

TO	FROM
F. A. Krock	D. Weiner

Official Temperature 1:00 P.M.

86 Degrees
47% Humidity

LIMO. NO.	TIME	PLACE	DRIVER	LOADED	EMPTY	WINDOWS OPEN
94	1:44 P.M.	Canal & Jackson	Sottosante	X		Yes
93	1:45 P.M.	Canal & Jackson	O'Malley		X	Yes
27	1:49 P.M.	Canal & Jackson	Cozzi	X		Yes
66	1:53 P.M.	Canal & Jackson	S. Busch		X	Yes
5	1:56 P.M.	Canal & Jackson	Kendricks		X	Yes
16	2:13 P.M.	Canal & Jackson	Goodman	X		Yes
49	2:15 P.M.	Canal & Jackson	O'Brien	X		Yes
2	2:25 P.M.	Canal & Jackson	Dargis	X		Yes
90	2:28 P.M.	Canal & Jackson	unknown	X		Yes
67	2:30 P.M.	Canal & Jackson	unknown		X	Yes
47	2:30 P.M.	Canal & Jackson	Steenholdt		X	Yes
91	2:40 P.M.	Canal & Jackson	Studzynski	X		Yes
35	2:42 P.M.	Canal & Jackson	unknown	X		Yes
22	2:50 P.M.	Canal & Jackson	Settepannie	X		Yes
95	2:53 P.M.	Adams & Canal	unknown		X	Yes

FILED

Rose E. Fuller - Official Court Reporter

PLAINTIFF'S EXHIBIT 127a

NEW YORK CENTRAL SYSTEM

S. W. BONE
PASSENGER TRAFFIC MANAGER
P. F. DONLEVY
ASST. TO PASSENGER TRAFFIC MANAGER

LA SALLE STREET STATION
CHICAGO 5, ILL.

June 3, 1953

Dear Bill:

Recognition of the Parmelee Transportation Company's Centennial will be given on our Chicago radio program, Station W.B.B.M., 7:45 - 8:00 A.M. (Daylight Saving Time) Monday, June 15th. Thought you might like to listen in.

Sincerely yours,

Donlevy

Mr. Wm. Scheeder
Vice President
Parmelee Transportation Company
300 North Des Plaines Street
Chicago, Illinois

Plaintiffs Exhibit 127 Defendants Exhibit (✓) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division
No.

BEFORE MINER, J.

Roy E. Fuller - Official Court Reporter

57 C 373

PLAINTIFF'S EXHIBIT 127b

The following announcement will be made by commentator Jim Conroy over radio station WBBM Monday, June 15, 1953, as the middle commercial on his 7:45 A.M. to 8:00 A.M. program sponsored by New York Central.

A very good friend of New York Central is celebrating a 100th Anniversary and I would like to take a moment to salute that friend, the Pullman Transportation Company. Yes, back in 1853, Frank Pullman, a young farm boy living near Chicago, saw a need brought about by the rapid growth of railroad transportation in Chicago. With two friends and assets of 6 omnibuses and wagons and horses to pull those vehicles, Frank Pullman went to work to provide ready intra-city transportation for passengers coming into Chicago aboard the 5 existing railroads, and the Pullman Transportation Company of today is still doing what its founder set out to do 100 years ago, to provide you the American traveler, with courteous and efficient service between passenger terminals.

So, from New York Central, a salute to Morris Markin, Chairman of the Board, to Cy Pascolt, President of Pullman, to our Pullman men in Chicago, Vice President Bill Schaefer and to all the men and women of Pullman all set to start another 100 years of fine travel service.

Congratulations from New York Central

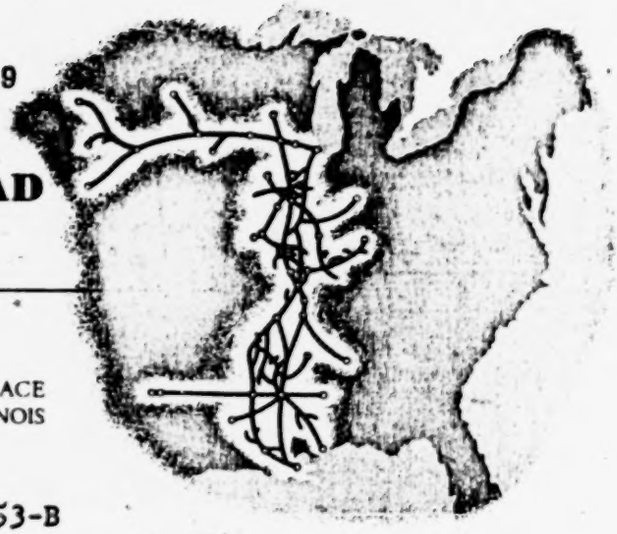
This information was telephoned to us by Mr. Donlevey who states that it was prepared by the New York Central railroad, New York office.

Plaintiff's Exhibit | Defendant's Exhibit | ( ) Identified ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

Roy E. Fuller, Official Court Reporter

PLAINTIFF'S EXHIBIT 129



ILLINOIS CENTRAL RAILROAD

Main Line of Mid-America

D. J. HEARNE
General Passenger Agent

135 EAST ELEVENTH PLACE
CHICAGO 5, ILLINOIS

Plaintiffs Exhibit 129 Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE MILLER, J.
No.
Roy E. Fuller - Official Court Reporter

May 12, 1953-B

Dear Mr. Markin:

Dear Mr. Passolt:

Even though I could not attend your 100th Anniversary outing and dinner on May 6, I appreciate your thoughtfulness in sending me the beautiful Flaminare lighter. I can assure you it will be very useful.

I have read with much interest the book about the first one-hundred years of the operation of Parmelee Company. Hearty congratulations to you and your assistants and best wishes for many many years of continued successful operation. Kind regards.

Sincerely,

Mr. M. Markin
Chairman of the Board
Mr. C. L. Passolt
President
Parmelee Transportation Company
300 North Desplaines Street
Chicago 6, Illinois

PLAINTIFF'S EXHIBIT 152

CHICAGO AND NORTH WESTERN RAILWAY COMPANY
400 WEST MADISON STREET
CHICAGO 6, ILLINOIS
DEARBORN 2-2121

J. R. BRENNAN
PASSENGER TRAFFIC MANAGER
N. H. JONES
ASST. PASSENGER TRAFFIC MGR.
C. E. QUACKENBUSH
GENERAL PASSENGER AGENT
R. B. KREHL
ASST. GENERAL PASSENGER AGENT

PLEASE REFER TO FILE NO.

April 12, 1954

B-2-54

MILWAUKEE ELKS BOWLING LEAGUE

Mr. W. A. Scheeder, VP
Parmelee Co.
Chicago, Ill.

Dear Mr. Scheeder:

Please refer to our letter of March 30 relative the above.

The Milwaukee Elks Bowling Team have, through their Bowling Chairman, Mr. Eddie Fleck, expressed great appreciation for the prompt and efficient handling this group was afforded on their transfer from our Station Saturday, April 3 to the LaSalle St. Station and on their return from LaSalle St. Station on April 4 to our Station enroute Milwaukee. We appreciate as do they, every courtesy that was accorded.

Yours very truly,

J. Brennan

WEB/rm
cc Mr. T.E.Nerland: The above refers to your advice TEN-401.
cc GFB GGM RJS

FILED
[illegible] 1950
AT [illegible] O'CLOCK
[illegible]

Plaintiffs Exhibit | Defendants Exhibit | ( ) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern [illegible] BEFORE

12 C 323

PLAINTIFF'S EXHIBIT 161

Plaintiff's Exhibit 161 Defendants Exhibit ( ) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division No. BEFORE MINER, J.
Roy E. Fuller - Official Court Reporter

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

IN THE SUPERIOR COURT OF COOK COUNTY

PARMELEE TRANSPORTATION COMPANY, a corporation, Plaintiff	IN EQUITY
vs.	NO. 55 S 18009
EARL B. PADRICK, as agent for the Chicago Terminal Lines, et al. Defendants	

ANSWER TO AMENDED COMPLAINT

Now come all the defendants except (1) Earl B. Padrick, as alleged agent for the Chicago Terminal Lines, and (2) Chicago Terminal Lines by Winston, Strawn, Smith & Patterson, their attorneys, and for answer to the amended complaint filed herein, state as follows:

1. Admit that plaintiff is a Delaware corporation, but deny the remaining allegations in paragraph 1.

2. Deny that Earl B. Padrick is an agent for the Chicago Terminal Lines, deny that the Chicago Terminal Lines is an unincorporated voluntary association of railroads, or is a legal entity, deny that the Chicago Great Western Railway Company is a railroad corporation organized in the State of Illinois, and admit the remaining allegations in Paragraph 2.

3. Admit the allegations in paragraph 3.

4. Admit the allegations in paragraph 4.

5. Admit the allegations in paragraph 5.

6. Admit all the facts well pleaded in paragraph 6 but deny the conclusions of law contained in said paragraph.

7. Deny the allegations in the first sentence of paragraph 7 and admit the allegations in the second sentence,

PLAINTIFF'S EXHIBIT 161 (Continued)

8. Deny the allegations in paragraph 8.

9. Admit the allegations of applicable rates of compensation except that the rates allegedly commencing July 1, 1945 did not commence until July 5, 1945; the special rate of 50 cents for transfer of military baggage did not commence on December 1, 1942 but commenced on November 6, 1942; and allege that the schedule set out in paragraph 9 omits a rate of 60¢ commencing September 1, 1944 for transfer of military dischargees. All the remaining allegations of paragraph 9 are denied.

10. Deny the allegations in paragraph 10.

11. Admit the allegations in the first sentence of paragraph 11, and deny the remaining allegations in said paragraph.

12. Deny the allegations in paragraph 12, and allege the fact to be that there was no fiduciary relationship between plaintiff and defendants.

13. Deny the allegations in paragraph 13 and allege the fact to be that there was no fiduciary relationship between plaintiff and defendants.

14. Deny the allegations in paragraph 14.

15. Deny the allegations in paragraph 15.

16. Deny the allegations in paragraph 16, and allege the facts to be that there was no contract or arrangement granting defendant the exclusive right of performing all such transfer services, and that it was the practice and custom, acquiesced in by plaintiff, that with respect to

the transfer of groups traveling on special rates or otherwise, the transfer services could be performed by others.

17. Deny the allegations in paragraph 17.

18. Deny the allegations in paragraph 18.

19. Deny the allegations in paragraph 19 and allege that plaintiff is not entitled to any relief either legal or equitable.

ADDITIONAL DEFENSES

For further defenses in their behalf these defendants allege:

1. It appears from the amended complaint that portions of the alleged causes of action resulting from alleged breaches of oral and written contracts did not accrue to the plaintiff within the period of five years or ten years, respectively, next preceding the commencement of this action, and that said portions of the alleged causes of action are barred by the statute of limitations.

2. The plaintiff is guilty of laches in not commencing this action within a reasonable time. By neglecting and delaying for a period of over twenty years to assert its claim, defendants have, as a result, not retained over such a long period of time the transfer coupons and through transportation tickets taken up in their collections, or received from plaintiff. It has been the practice of the defendants to dispose of such coupons and tickets after the lapse of a reasonable time. Had the alleged right of plaintiff been more promptly asserted, defendants could have taken the steps necessary to protect themselves against claims such as this,

by retaining in their files all such coupons and tickets which would have established the true facts herein. As a result of the aforementioned conduct, delay and neglect of the plaintiff, it would now be inequitable to permit plaintiff to maintain this action.

3. From time to time during the period covered by the amended complaint, plaintiff, in accordance with its contracts and agreements with defendants, presented each defendant with a statement of the amount of money then owing to plaintiff on account of transfer services performed by plaintiff, all of which sums were from time to time paid by each defendant and accepted by plaintiff, and therefore the account or accounts became stated.

4. From time to time during the period covered by the amended complaint, plaintiff and defendants conferred to negotiate increases in the price of the transfer coupons. During these negotiations, the parties mutually examined the details of the performance of plaintiff's services, and the plaintiff's demands and needs for additional revenue. As one justification for revenue increases plaintiff claimed revenue losses which occurred when plaintiff, although not transferring a passenger, did transfer his baggage, but was not compensated for such service if the ticket agent failed to cancel the baggage privilege on the passenger's transfer coupon. In order to make up for this alleged revenue loss, plaintiff demanded and received increases in its compensation for passenger and baggage transfer service. The increase in compensation for such services, agreed to by the parties, paid by the defendants and accepted by the plaintiffs has

PLAINTIFF'S EXHIBIT 161 (Continued)

resulted in a complete accord and satisfaction of the alleged claims of the plaintiff.

WHEREFORE, defendants pray for judgment against the plaintiff for their costs.

Winston Strawn Smith & Patterson

WINSTON, STRAWN, SMITH & PATTERSON
Attorneys for Defendants.

PLAINTIFF'S EXHIBIT 161 (Continued)

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

DOUGLAS C. MOIR, being first duly sworn, on oath deposes and says that he is one of the attorneys for the defendants herein; that he is authorized to act on behalf of said defendants; that he has read the foregoing Answer by him subscribed; that from a personal investigation of the facts involved herein he knows the contents thereof and that the same are true in substance and in fact.

Douglas C. Moir

Subscribed and sworn to before
me this _____ day of July,
A. D. 1956.

_____

Notary Public.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 498

PARMELEE TRANSPORTATION COMPANY,
A DELAWARE CORPORATION,

Plaintiff,

vs.

JOHN L. KEESHIN, ET AL.,

Defendants.

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THOMAS C. McCONNELL,
Pro se,
134 S. LaSalle Street,
Chicago 3, Illinois.

THE DUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No.

PARMELEE TRANSPORTATION COMPANY,
A DELAWARE CORPORATION,

Plaintiff,

vs.

JOHN L. KEESHIN, ET AL.,

Defendants.

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Thomas C. McConnell, respectfully prays that a writ of certiorari may issue to the United States Court of Appeals for the Seventh Circuit to review a judgment of that Court affirming in part Specification 6 of a contempt order entered under Rule 42(a) of the Federal Rules of Criminal Procedure against this petitioner on June 30, 1960, by Judge Julius H. Miner of the United States District Court for the Northern District of Illinois.

OPINIONS BELOW

The majority and dissenting opinions of the United States Court of Appeals for the Seventh Circuit, rendered on July 6, 1961, are not yet reported but are printed in the appendix hereto, *infra*, pp. 1-14.

The opinion of the United States Court of Appeals for the Seventh Circuit, rendered on July 10, 1961, reversing the contempt conviction of petitioner's co-counsel, Lee A. Freeman, in related Appeal No. 13176, is not yet reported but is printed in the appendix hereto, *infra*, pp. 15-22.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on July 6, 1961, and is printed in the appendix hereto, *infra*, p. 23. Petitioner thereupon filed a petition for rehearing which was denied on October 5, 1961. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U. S. C. § 1254(1) and Rule 22(2) of the Rules of the Supreme Court of the United States.

QUESTIONS PRESENTED FOR REVIEW

1. Can a lawyer be summarily sentenced for criminal contempt where no obstruction to the performance of judicial duty is shown, as required by subsection (1) of 18 U. S. C. § 401, limiting the power of a judge to punish for criminal contempt to "Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice"?

2. Can a lawyer be sentenced for criminal contempt under Section 42(a) of the Federal Rules of Criminal Procedure where it was conceded by the trial judge that no emergency of any kind was presented?

STATUTE AND RULES INVOLVED

1. 18 U. S. C. § 401, 62 Stat. 701, providing in pertinent part:

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; * * *."

2. Rule 42 of the Rules of Criminal Procedure for United States District Courts, Rule 42, 18 U. S. C., providing:

"(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

"(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding

of guilt the court shall enter an order fixing the punishment."

3. Rule 43(c) of the Rules of Civil Procedure for the United States District Courts, Rule 43(c), 28 U. S. C., providing in pertinent part:

"(c) Record of Excluded Evidence. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon * * *."

STATEMENT OF THE CASE.

The decision of the Court of Appeals was rendered after an appeal by petitioner from an order entered by Judge Julius H. Miner on June 30, 1960, adjudging petitioner guilty of criminal contempt and sentencing him to confinement for a period of ten days on each of three specifications described in the contempt order, said sentences to run concurrently. The contempt order (R. 6-11) was entered by Judge Miner under Rule 42(a) of the Federal Rules of Criminal Procedure and the alleged acts of contempt occurred during the trial of the case of *Parmelee Transportation Company* v. *John L. Keeshin, et al.*, in which case a petition for certiorari is presently pending in this Court (Docket No. 431).*

* The record in the *Parmelee* case is part of the record in this cause and consists of the six-volume printed appendix filed in the court below. The remainder of the printed record in this cause is contained in a separate printed appendix filed below on petitioner's appeal and related appeal No. 13176. References herein to the *Parmelee* record will contain both the appropriate volume and page number, while references to the separate appendix record will contain the page number only.

Of the three specifications of contempt entered by the trial court against this petitioner, two of them, designated as Specifications 5 and 7, were held not to constitute any contempt as a matter of law by unanimous decision of the Court of Appeals (App., *infra*, pp. 3, 7). Four specifications of contempt entered by Judge Miner aganst Lee A. Freeman, petitioner's co-counsel, were likewise dismissed as not constituting contempt as a matter of law (App., *infra*, p. 22). The third specification entered against this petitioner was affirmed in part by the vote of two of the Court of Appeals judges, with Judge Duffy, Circuit Judge, dissenting. He said (App., *infra*, pp. 13-14):

> "I agree with the majority opinion that the convictions under Specifications 5 and 7 should be reversed. * * *
>
> "I would also reverse as to Specification 6. * * *
>
> * * * * *
>
> "* * * There was no obstruction in the administration of justice. In my view, the conviction for criminal contempt under Specification 6 should also be reversed."

The majority opinion affirmed the holding of contempt on Specification 6, although reducing the punishment from a jail sentence to a fine of $100.00. As to that, the majority opinion says (App., *infra*, p. 7):

> "As to specification 6, we hold that with the exception of one statement attributed to respondent, nothing with which he is charged has been supported by proof of contumaciousness or disrespect.
>
> "The exception in specification 6, to which we have just referred, charges that respondent said:
>
> "'* * * We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us.'"

The circumstances under which petitioner made these remarks are summarized in Judge Duffy's dissenting opinion as follows (App. *infra*, p. 13):

> "* * * The majority opinion describes the difficulties the plaintiff's counsel McConnell encountered in trying to preserve his client's rights. The attorneys for plaintiff were driven to a sense of frustration due to the District Court's rulings on offers of proof. Under such circumstances, it is understandable that an attorney might say things which should not have been said. I think that was the situation in the case at bar.
>
> "However, the majority opinion does not adequately present the setting in which the McConnell statement was made. He addressed the Court as follows: 'We have a right to ask questions which we offer on this issue, and Your Honor can sustain their objection to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us.' McConnell's statement occurred during the reading of the deposition of Howard E. Simpson, president of the Baltimore & Ohio Railroad. Simpson was a defendant. One of plaintiff's attorneys was reading portions of Simpson's adverse examination to lay the foundation for an offer of proof. The statement made by McConnell was followed almost immediately by a recess. When the court session was resumed, Mr. McConnell complied with the Court's ruling, and did not persist in asking the particular questions.
>
> "It might be noted that counsel's vigorous insistence on preserving his client's rights bore fruit, as the trial judge later changed his ruling. Counsel was then permitted to ask questions in the presence of the jury as a condition precedent to the offers of proof made in accordance with Rule 43(c), Federal Rules of Civil Procedure."

Prior to this incident, the trial court had improperly limited the issues in an antitrust suit to be tried before a jury to the issue of "public injury" (R. I, 396-416, 441-2),

which issue this Court subsequently declared to be irrelevant in the trial of an antitrust case for damages. *See Radiant Burners, Inc. v. Peoples Gas Light and Coke Company, et al.*, 364 U. S. 656, 660 (1961).

Under this ruling, petitioner was precluded from offering any evidence of the conspiracy alleged in the complaint, and it was in an effort to offer proof of conspiracy in order to preserve a record for review on the issue of "public injury" that petitioner's difficulties arose.

As stated in the majority opinion (App. *infra*, pp. 4-5):

> "He [McConnell] attempted to follow the usual procedure, which consists of putting a question to a witness in the presence of the jury and, when an objection is made, an offer of proof is made out of the presence of the jury. Finally the court admitted that this procedure followed by respondent was required by 'the cases' as he 'read them'. However, later the court struck from the record several offers of proof bearing upon the charges of conspiracy and monopoly, for the reason that these charges had nothing to do with the question of public injury.
>
> "* * * The method that respondent followed is in accord with the long-established practice in Anglo-Saxon courts and this incident emphasizes the great importance of trial court experience for lawyers generally. Ironically, respondent's adherence to what he had learned in this respect in the courts led to his being ordered to jail."

It is thus conceded by both opinions of the Court of Appeals that, in the face of the trial court's threat to abrogate the rule, petitioner's remarks constituted nothing more than a threat to meet the conditions imposed by Rule 43(c) of the Federal Rules of Civil Procedure. Parenthetically, this rule was promulgated by this Court and specifies and describes the method which petitioner was attempting to use *as the sole method of preserving an offer of proof for review by a court of appeals.*

Petitioner's remarks not only were occasioned by the trial judge's ruling but by opposing counsel's insistence that the rule be followed (R. II, 598).

The ruling of the Court of Appeals which this petition seeks to review by certiorari threatens the destruction of a litigant's right to make a proper offer of proof. It is apparent that under the ruling of the Court of Appeals there is no way a lawyer can make such an offer in the event, as here, the trial court decides to abrogate the Rules of Civil Procedure, unless he is willing to subject himself to the risk of a contempt sentence. The public interest involved in changing such a ruling is apparent.

REASONS FOR GRANTING THE WRIT.

I.

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN CONFLICT WITH THE DECISIONS OF THIS COURT AND HAS SO FAR DEPARTED FROM THE ACCEPTED COURSE OF JUDICIAL PROCEDURE AS TO CALL FOR THE EXERCISE OF THIS COURT'S POWER OF REVIEW.

The court below states (App., *infra*, p. 7):

> "The whole theory for holding respondent immune from his conduct in representing his client in good faith is satisfied when he is permitted to make a record in a respectful manner in the trial court for use in a court of review."

The court below thus tacitly admits that in so far as it was necessary for petitioner to act to make a record for review, he could not be guilty of contempt.

In the instant case, this Court created the method for making a record on appeal by offer of proof by the writing of Rule 43(c) of the Federal Rules of Civil Procedure. In the instant case, counsel opposing petitioner's client were properly insisting upon its application. Their chief counsel said (R. II, 598):

> "* * * We are not going to sit still for a moment and have an offer of proof made that is not directed to a question pending before a witness who is on the stand because that is exactly what the rule says * * *."

When Judge Miner undertook to set aside the rule asserted by defense counsel, petitioner, then faced with opposing counsel's objections, was left with no method of making a record for review except his right to insist upon

asking questions pursuant to the rule until stopped by the threat of contempt. We most respectfully suggest that asking questions pursuant to the rule does not constitute "misbehavior" within the meaning of Subsection 1 of 18 U. S. C. § 401. We further submit that petitioner's consequent threat to ask questions in accord with the rule, should not make him a criminal because it was not an obstruction to judicial duty. The proper rule to be invoked is as stated by this Court in *Ex Parte Hudgings*, 249 U. S. 378 (1919), at page 383:

> "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted, * * *."

In the instant case, petitioner's position, instead of obstructing "judicial duty", brought about a compliance with Federal Rule 43(c). As a result of the colloquy and after the incident had taken place, the trial court said (R. III, 935):

> "* * * the cases as I read them require the presenting of a witness to ask him some questions, and when I decline to let him answer, then they can proceed with the offer of proof.
>
> "By Mr. Thompson: There isn't any question about that. All of us agree with that."

In the instant case, Circuit Judge Duffy held specifically that the incident set forth under Specification 6 did not tend to obstruct the administration of justice. He said (App., *infra*, p. 14):

> "Nevertheless, Mr. McConnell did comply with the Court's order. At that point there was no interference with the conduct of the trial. There was no obstruction in the administration of justice. In my view, the con-

> viction for criminal contempt under Specification 6 should also be reversed."

The instant record shows that petitioner was being whipsawed between opposing counsel's proper objections and the court's erroneous ruling. In this situation, *all that petitioner threatened to do was to ask questions in the exact manner prescribed by Rule 43(c) of the Federal Rules.*

Ironically, in referring to the charges under the preceding Specification 5, the majority opinion stated that the record must show an obstruction to justice if a conviction for contempt is to be sustained. It said (App., *infra*, p. 6):

> "In the case at bar the order from which the appeal was taken contains no finding that respondent's conduct tended to obstruct or continued to obstruct the administration of justice * * *."

However, in dealing with Specification 6, the Court ignored this limitation on the summary use of power by a trial court imposed not only by the decisions of this Court but by the statute as well (See 18 U. S. C. § 401).

II.

IN AFFIRMING JUDGE MINER'S REFUSAL TO DISQUALIFY HIMSELF, THE COURT OF APPEALS' DECISION REFUSES TO FOLLOW APPLICABLE DECISIONS OF THIS COURT.

The decision of the Court of Appeals in affirming summary punishment is in direct conflict with the holdings of this Court in *Offutt* v. *United States*, 348 U. S. 11 (1954) and *Cooke* v. *United States*, 267 U. S. 517 (1925).

In the instant case, petitioner was not sentenced under Specification 6 until six weeks after the conclusion of the trial (R. IV, 1718) and after the trial court had stated he was holding petitioner in contempt for making "direct at-

tacks on the Court" (R. IV, 1718). At the same time, he stated: "There is no emergency about it" (R. IV, 1718).

In the *Offutt* case, Mr. Justice Frankfurter, rendering the majority opinion, quoted with approval the language of *Cooke* v. *United States*, and based a decision of reversal thereon. The quoted language utilized was:

> "* * * where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place." (348 U. S. at pp. 14-5.)

In the *Offutt* case, this Court reversed the holding of contempt entered by a judge who had refused to ask one of his fellow judges to take his place.

In the instant case, Judge Miner proceeded to deal summarily with the matter even though he admitted no emergency was present, and even though no obstruction of justice was shown. On a motion to vacate he was specifically asked to disqualify himself. This he refused to do by denying the motion (R. 11-19, 42).

CONCLUSION.

The ruling of the Court of Appeals for the Seventh Circuit in the case at bar is manifestly erroneous and against public policy, and raises a serious question in the administration of justice in the United States courts. The question presented is of paramount public importance because, as shown by the instant record, unless a lawyer is permitted to comply with the rules of the court, a litigant can never assert rights in the courts. He not only cannot receive a fair trial, but he has no recourse on review in the upper courts. Under the ruling in this case, it is impossible for a lawyer to make an offer of proof in accord with a

rule promulgated by this Court without running the risk of a jail sentence.

It is therefore respectfully urged that irrespective of the rights of this particular petitioner, and on the ground of the manifest public interest in the questions presented, this petition for a writ of certiorari should be granted.

Respectfully submitted,

THOMAS C. MCCONNELL.

Pro Se.

APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

No. 13175 SEPTEMBER TERM, 1960 APRIL SESSION, 1961.

PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, *Plaintiff*,
v.
JOHN L. KEESHIN, ET AL., *Defendants*.

In the matter of criminal contempt of THOMAS C. McCONNELL, *Respondent-Appellant*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

July 6, 1961.

Before DUFFY, SCHNACKENBERG and CASTLE, *Circuit Judges*.

SCHNACKENBERG, *Circuit Judge*. Thomas C. McConnell, respondent, has appealed from an order of the district court entered by Judge Julius H. Miner thereof, on June 30, 1960, adjudging him guilty of criminal contempt and sentencing him to confinement for a period of ten days on each of three specifications described in said contempt order, said sentences to run concurrently. The alleged acts of contempt occurred in connection with the trial of the case of *Parmelee* v. *Keeshin, et al.*[1]

1. An appeal in this case was decided in this court, as case No. 13160, on June 30, 1961.

1. Specification 5 reads as follows:

> "On April 21, 1960, prior to the selection of a jury, although Thomas C. McConnell, by his own statement, had read the transcript of the previous hearing in the cause at which the Court of its own motion suggested that consideration be given to separation of the issue of public injury for trial, and although no such suggestion or motion had been made by any attorney for any defendant at any hearing in the case, Mr. McConnell stated as follows:
>
> > "'This should be a forum where we could have that lawsuit tried without being hemmed in and penned in with a lot of artificial restrictions, dreamed up by counsel on the other side, whereby we are not given an opportunity to tell this jury what this lawsuit is about.'"

Respondent contends that he did not take the position that the court had no right to divide issues "under Rule 21," but that the issue the court proposed to segregate for trial was irrelevant. This position of respondent is supported by *Radiant Burners* v. *Peoples Gas Co.*, 364 U.S. 656, 660. In fact, Judge Miner, at the end of the case, seems to have conceded that McConnell was not arguing the power of the court to separate legitimate issues for trial, when the judge said:

> "* * * Plaintiff opposed the separation on legal grounds, arguing that it was unnecessary for plaintiff to prove public injury as such; * * *"

Nevertheless the court then said that he had read the briefs and the pleadings and that plaintiff made a specific allegation of public injury, which the defendants denied, and hence it was prerequisite that it be established.

We find it most difficult, if not impossible, to read into anything referred to in specification 5 any contumacious conduct by respondent. While no defense attorney had made a suggestion or motion for separation of the issue

of public injury for trial, the court had indicated that from reading the briefs and pleadings, the defendants had made a special denial of public injury and "that makes a prerequisite its establishment before we can go on with the others, the right to recover." In view of the correct contention of respondent that public injury was not a relevant issue, it is evident from the charge in specification 5 that respondent was referring to the arguments in the briefs and pleadings of defendants and that he had substantial basis for the language which he used, in view of the Supreme Court holding in *Radiant Burners, supra,* as well as *Radovich v. National Football League*, 352 U.S. 445, 453.

We hold that, on the record before this court, specification 5 does not validly charge respondent with contempt of court.

Specification 6 reads as follows:

> "On April 27, 1960, in the presence and hearing of the jury, after the Court had instructed the attorneys for plaintiff to refrain from repeatedly asking questions on subjects which the Court had ruled was not admissible, in the presence of the jury as distinguished from an offer of proof outside the presence of the jury, the following occurred:
>
> > 'By Mr. McConnell: Now you are trying to tell us we can't ask these questions. We have a right to ask these questions, and until we are stopped from asking these questions we are going to ask them, because it is in our prerogative in doing it.
> >
> > 'By the Court: I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.
> >
> > 'By Mr. McConnell: We have a right to ask them.
> >
> > 'By the Court: You can offer proof on it.
> >
> > 'By Mr. McConnell: We have a right to ask

> questions which we offer on this issue, and Your Honor can sustain their objection to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us.' "

As indicated in our opinion in No. 13160, the case of *Parmelee* v. *Keeshin, et al.*, was on trial before court and jury when respondent proposed to make offers of proof outside the presence of the jury. Upon defendants' rejection of plaintiff's suggestion, the court ordered the trial to proceed. Respondent stated that the offers would involve proof of the conspiracy and monopoly issues, which he was advised "will have to be made outside the presence of the jury". The court responded: "That is correct. That is my ruling."

Respondent explained that he was simply laying a basis in the record for an appeal and that he wished to have the record show the offers that he was making.

He attempted to follow the usual procedure, which consists of putting a question to a witness in the presence of the jury and, when an objection is made, an offer of proof is made out of the presence of the jury.[2] Finally the court admitted that this procedure followed by respondent was required by "the cases" as he "read them". However, later the court struck from the record several offers of proof bearing upon the charges of conspiracy and monopoly, for the reason that these charges had nothing to do with the question of public injury.

It is obvious that respondent, although with difficulty, was maintaining his client's position, despite the shift in the court's rulings as to the submission of offers of proof in a jury case. The method that respondent followed is in accord with the long-established practice in Anglo-Saxon courts and this incident emphasizes the great im-

2. This procedure is recognized by 28 U.S.C.A. Rule 43(c).

portance of trial court experience for lawyers generally. Ironically, respondent's adherence to what he had learned in this respect in the courts led to his being ordered to jail. Fundamentally there is no adequate substitute in the heat of a contested trial for prior trial experience. Of course in these days, when more money can be made by lawyers outside of courtrooms, the number of experienced trial lawyers is rapidly decreasing. So, to supply a synthetic experience in capsule form to take the place of trial experience, we have rules of court, such as 28 U.S.C.A. Rule 43 (c), *supra*, just as we have vitamin pills as a substitute for meals which always have taken considerable time in preparation as well as in eating. So, now, without trial experience, or the expenditure of time to learn why it is so, the modern lawyer may simply read the rules of civil procedure and practice according to the rule book. If there is any area of trial court practice which is not now covered by the rules, it is probable that a new rule will be promulgated in due time.

We have attempted to reproduce the essence of the turbulence under which respondent was required to act in protecting his client's rights. It is not the purpose of this opinion to decide whether he was correct in his statement of the substantial rights of his client. We are here concerned with the question of whether respondent as an attorney conducted himself properly in an attempt to represent his client. It was his right as well as his duty to firmly and respectfully advance plaintiff's claims and assert its rights. In so doing, he had as much right to be in the courtroom and to act as did the judge. He had a right, when the court ruled that he could not introduce evidence, to make offers of proof thereof, to the end that, in case of an appeal, a proper basis for a review might appear in the record. The presiding judge had a right to punish respondent for any contumacious violation of

his duty as a member of the bar in this proceeding. Power to punish for contempt is one which must be used sparingly and only when it is clearly demonstrated that the respondent's conduct is contumacious and tends to bring the administration of justice into disrepute, rather than when his conduct is that of a determined level-headed practitioner who is acting respectfully to the court under considerable pressure in a lengthy and important trial.

18 U.S.C.A. § 401 provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person, in its presence or so near thereto as to obstruct the administration of justice;
>
> * * *

In *Ex parte Hudgings*, 249 U.S. 378, 383, the court said:

> "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted—
>
> * * *"

This case was cited with approval in *In re Michael*, 326 U.S. 224, 228.

In the case at bar the order from which the appeal was taken contains no finding that respondent's conduct tended to obstruct or continued to obstruct the administration of justice, although we do not base our decision on this omission. Rather we think that its absence strongly indicated that the district court could find no support in the record for such a statement. Actually it appears that the specifications upon which the order was based were not made until several weeks after the trial in question had occurred.

As to specification 6, we hold that, with the exception of one statement attributed to respondent, nothing with which he is charged has been supported by proof of contumaciousness or disrespect.

The exception in specification 6, to which we have just referred, charges that respondent said:

> "* * * We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us."

The whole theory for holding respondent immune from his conduct in representing his client in good faith is satisfied when he is permitted to make a record in a respectful manner in the trial court for use in a court of review. The theory rests on the premise that he needs no further protection than an adequate record and that, if the court infringes his right to make such a record, his redress is in the court of review. His language which we now quote indicates that he did not rely alone upon this protection but that he took the position that he intended to physically defy the court to the point that only a superior physical force called upon by the court could prevent him from proceeding. Even if he was right in his method of making a record and the court was wrong, this threat was inexcusable contumacious conduct. While events did not precipitate a physical clash, respondent made it clear when he uttered these words that he proposed to insist upon pursuing his course of action until stopped by a court bailiff. This proof is enough to support specification 6 and to that extent will require an affirmance of the order from which this appeal has been taken. We shall, however, reduce the punishment thereunder to a fine of $100.

Specification 7 reads:

> "Repeatedly during the course of the trial Thomas C. McConnell conducted himself in a contumacious

> manner by employing a tone of voice and an attitude indicating contempt and defiance of the Court and disregarding admonitions of the Court with respect to his conduct before the jury."

This specification, without citation of any part of the record to support it, is too general to require an answer by respondent or a definitive ruling by this court. If the law were otherwise, we would be required to determine whether the order was justified without being directed to a single fact, word or deed alleged to have been spoken or performed by the accused. As one court said in regard to such a charge:

> "* * * The conclusions of the judge, unsupported by specific facts, in a direct contempt proceeding bear no weight whatsoever."

People v. *Hassakis*, 6 Ill. 2d 463, 129 N. E. 2d 9, 11: To the same effect are cases summarized in 154 A.L.R. 1227.

We find nothing cited in a brief filed by the United States attorney in support of the contempt orders which justifies specification 7. In fact, that brief seeks shelter in the argument that, inasmuch as concurrent sentences were imposed on each of several specifications, the upholding of an order on any one is sufficient.

We hold that specification 7 does not constitute contempt as a matter of law since it recites mere conclusions and no facts on which the alleged contempt is based.

2. Respondent contends that fundamental fairness required that Judge Miner disqualify himself from acting in the contempt matter. This, he says, is because Judge Miner considered the alleged contempts as a personal attack upon himself, and, at the same time, he conceded that there was "no emergency about it."

Respondent relies particularly upon *Offutt* v. *United*

States, 348 U.S. 11; *In re Marchison*, 349 U.S. 133; and *Farese* v. *United States*, 1 Cir., 209 F. 2d 312, 315.

It is a general rule that a direct contempt against the court is not sufficient to disqualify a court or a judge thereof. *Patterson* v. *Colorado*, 205 U.S. 454, 463.

In discussing rule 42 (a)[3] the court said in *Sacher* v. *United States*, 343 U.S. 1, 11:

> "A construction of the Rule is advocated which would deny a judge power summarily to punish a contempt that is personal to himself except, perhaps, at a moment when it is necessary to forestall abortion of the trial. His only recourse, it is said, is to become an accuser or complaining witness in a proceeding before another judge.
>
> "The Rule itself expresses no such limitation, and the contrary inference is almost inescapable. It is almost inevitable that any contempt of a court committed in the presence of the judge during a trial will be an offense against his dignity and authority. At a trial the court is so much the judge and the judge so much the court that the two terms are used interchangeably in countless opinions in this Court and generally in the literature of the law, and contempt of the one is contempt of the other. It cannot be that summary punishment is only for such minor contempts as leave the judge indifferent and may be evaded by adding hectoring, abusive and defiant conduct toward the judge as an individual. Such an interpretation would nullify, in practice, the power it purports to grant."

In *Offutt* v. *United States*, *supra*, the court considered a proceeding growing out of a criminal trial where Offutt was defendant's trial counsel. From the opinion of the Supreme Court the following statement of facts appears, at 12:

* * *

3. 18 U. S. C. A. rule 42(a).

"• • • Almost from the outset, a clash between the presiding judge and petitioner became manifest, which, it is fair to say, colored the course of the trial throughout its 14 days, and with increasing personal overtones. The judge again and again admonished petitioner for what he deemed disregard of rulings and other behavior outside the allowable limits of aggressive advocacy, and warned him of the consequences by way of punishment for contempt which such conduct invited. On the other hand, these interchanges between court and counsel were marked by expressions and revealed an attitude which hardly reflected the restraints of conventional judicial demeanor. Such characterization of necessity derives from an abiding impression left from a reading of the entire record.

"At the close of the trial, after the jury had retired for deliberation, the judge, acting under the procedure prescribed by Rule 42 (a) of the Federal Rules of Criminal Procedure and involving the authority of *Sacher* v. *United States*, 343 U. S. 1, found the petitioner guilty of criminal contempt on the basis of a certificate filed under the Rule, containing 12 findings of 'contumacious, and unethical conduct in open court during the trial,' and ordered him committed for 10 days to the custody of the United States Marshal for the District of Columbia.

"The Court of Appeals found that four of the 12 findings amply supported the commitment, but reduced the punishment from 10 days to 48 hours. It concluded that 'the record does not support the penalty imposed. Appellant's conduct cannot fairly be considered apart from that of the trial judge. Each responded to great provocation from the other. • • •'"

The court pointed out at 17:

"• • • The record discloses not a rare flare-up, not a show of evanescent irritation — a modicum of quick temper that must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, 'the trial judge permitting himself to become personally embroiled with the petitioner. • • •'"

In reversing, the court suggested that the judge who imposed the sentence should invite the assignment of another judge to sit in the second hearing on the charge against the petitioner.

In the present appeal, while what we have said herein has not been in entire approval of the conduct of the district court, we do not find that he was personally involved in controversy with the respondent or that in his rulings leading to the orders appealed from he was actuated by personal enmity toward either of the lawyers held in contempt. Accordingly we do not feel that the *Offutt* case requires that upon the record before us there should be a remandment for retrial before another judge. Whatever may have been the reasons that caused the trial judge to commit the errors which we have recounted in cases Nos. 13160, 13175 and 13176, the records before us affirmatively rebut any personal enmity harbored by the judge against the two respondents before him.

We, therefore, hold that the district court did not err in failing to refer the questions of contempt to the executive committee for assignment for hearing by another judge.

3. In addition to the specifications aforesaid, the order now under attack contains some prefatory remarks which respondent characterizes as "a diatribe without any support in the record." He refers to this language:

> "* * * Both attorneys for the plaintiff herein, embarked upon a course of unprofessional, unethical, intimidating, insulting, defiant, unfair and improper behavior, to foist their will upon the Court and jury and to dominate the course of procedure herein without regard to an honest and impartial administration of justice."

Inasmuch as the court's order must stand or fall on the specifications, the language in the preface is unim-

portant, unless it supports respondent's contention that it showed the prejudice of the trial judge and that he was "incapable of giving him any kind of a fair hearing on the issue of contempt". We cannot give it such effect. Nor does the court's language in the preface indicate that the order of contempt or the punishment therefor was based upon the conduct described other than in the specifications. In this respect, we are impressed by the reasoning of the court in *MacInnis* v. *United States*, 9 Cir., 191 F. 2d 157, 161, cert. denied, 342 U. S. 953:

> "* * * The court's remarks addressed to counsel after the verdict had been returned admirably show the poise of the judge and that the sentence was based upon the statements contained in the certificate in their frame of circumstance. The court's reference to the general conduct of counsel throughout the trial does not indicate that either the judgment of contempt or the punishment therefor rests upon such conduct. The court found appellant's statements to be contemptuous and measured the punishment to fit the offense. The court's remarks constitute an explanation of the fact that counsel's conduct other than the contemptuous remarks was such that the contemptuous statements would not be condoned."

In accordance with the reasons which we have stated, the order from which this appeal has been taken is reversed as to respondent Thomas C. McConnell, except as to specification 6 therein only as to which it is affirmed and this cause is remanded to the district court with instructions to vacate the sentence imposed and in lieu thereof to impose a fine of $100 on said specification 6, to be paid by respondent Thomas C. McConnell to the clerk of the district court, pursuant to law.

ORDER REVERSED IN PART AND IN PART AFFIRMED AND REMANDED WITH INSTRUCTIONS.

DUFFY, *Circuit Judge*, dissenting in part.

I agree with the majority opinion that the convictions under Specifications 5 and 7 should be reversed. I also agree that Judge Miner did not err in failing to ask the Executive Committee to assign another judge to hear the charges of contempt.

I would also reverse as to Specification 6. The majority opinion describes the difficulties the plaintiff's counsel McConnell encountered in trying to preserve his client's rights. The attorneys for plaintiff were driven to a sense of frustration due to the District Court's rulings on offers of proof. Under such circumstances, it is understandable that an attorney might say things which should not have been said. I think that was the situation in the case at bar.

However, the majority opinion does not adequately present the setting in which the McConnell statement was made. He addressed the Court as follows: "We have a right to ask questions which we offer on this issue, and Your Honor can sustain their objection to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us." McConnell's statement occurred during the reading of the deposition of Howard E. Simpson, president of the Baltimore & Ohio Railroad. Simpson was a defendant. One of plaintiff's attorneys was reading portions of Simpson's adverse examination to lay the foundation for an offer of proof. The statement made by McConnell was followed almost immediately by a recess. When the court session was resumed, Mr. McConnell complied with the Court's ruling, and did not persist in asking the particular questions.

It might be noted that counsel's vigorous insistence on preserving his client's rights bore fruit, as the trial judge later changed his ruling. Counsel was then permitted to

ask questions in the presence of the jury as a condition precedent to the offers of proof made in accordance with Rule 43(c), Federal Rules of Civil Procedure.

Mr. McConnell has had much trial experience. Even under the stress of the exasperating conditions such as he encountered, he should never have threatened to continue asking the questions in view of the Court's rulings, although he felt certain the rulings were incorrect. After the recess, when he had had time to cool down and consider the language used, he should have apologized to the Court.

Nevertheless, Mr. McConnell did comply with the Court's order. At that point there was no interference with the conduct of the trial. There was no obstruction in the administration of justice. In my view, the conviction for criminal contempt under Specification 6 should also be reversed.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

No. 13176 SEPTEMBER TERM, 1960 APRIL SESSION, 1961.

PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, *Plaintiff.*
v.
JOHN L. KEESHIN, ET AL., *Defendants.*

In the matter of criminal contempt of LEE A. FREEMAN, *Respondent-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

July 10, 1961

Before, DUFFY, SCHNACKENBERG and CASTLE, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* Lee A. Freeman, respondent, has appealed from an order of the district court entered by Judge Julius H. Miner thereof, on June 30, 1960, adjudging him guilty of criminal contempt and sentencing him to confinement for a period of ten days on each of four specifications set forth in said contempt order, said sentences to run concurrently. The alleged acts of contempt occurred in connection with the trial of the case of *Parmelee* v. *Keeshin*,[1] in which respondent was co-counsel for plaintiff with Thomas C. McConnell.

1 An appeal in this case was decided in this court, as case No. 13160, on June 30, 1961.

1. Specification 1 reads as follows:

"On April 28, 1960, in the presence and hearing of the jury, the following occurred:

'By Mr. Freeman: Was the railroad service limited in substantial respects with respect to the railroad passengers that had available to them these transfer coupons?

'By Mr. Keating: Same objection, as a conclusion.

'By the Court: The same ruling.

'By Mr. Freeman: That is crazy.' "

During a jury trial required by the court on the sole issue of public injury, over the objection of counsel in the case, and in the presence of the jury, Benjamin F. Goldstein, a witness called by plaintiff, was testifying, under examination by respondent. The court sustained objections to certain questions put by respondent who remarked, "that is crazy."

We have carefully read the record of proceedings and believe that it can be reasonably inferred that the last remark of respondent was addressed to his co-counsel, Mr. McConnell, and was not intended to be heard by either the court or the jury. Certainly the record fails to show that Judge Miner took any notice whatever of the remark at the time. When the jury had been excused for the day, respondent's opposing counsel said:

"I would just like to say that I appreciate that it is difficult perhaps for counsel for the plaintiff, sitting within three or four feet of the jury, to confer at all without conveying it in such a fashion the jury will overhear it.

"I overhead one of the remarks this afternoon, clear over in my seat, which is twice as far away as the jury is."

Whereupon respondent answered:

"You don't have to say any more, Mr. Thompson. If I did do that, it was certainly inadvertence, and

we will, if there is any conferring, it will be in the lightest whisper. We certainly understand what you suggest is entirely proper."

Whereupon the court stated:

"I think that covers that with the jury and with counsel."

We hold that contumacious conduct has not been proved under specification 1.

2. Specification 2 reads as follows:

"On April 29, 1960, out of the presence and hearing of the jury but in open court, Mr. Freeman made the following statement to the Court:

'Your Honor, may I, with all deference, inquire whether or not this memorandum that was entered by you on December 6 has any significance or shall it be completely ignored?

'It seems to be, Your Honor, that you are willing to ignore those instances, and I will point out another one to Your Honor where you have ruled that documents are admissible, but at any time I seek to present a document that you have ruled admissible, there is a waving of arms on my learned counsels' side, and an immediate denial.

'I think, Your Honor, that if there is to be a reconsideration of this memorandum, it should be reconsidered for both sides and not for one side, and let me just in this connection point out that you have during the course of this trial rejected the Soo Line exhibits, which are exhibits, Plaintiff's Exhibits 11, 12 and 13.

'These three documents were submitted in our list of documents that we intended to offer as Item 43, and there was an objection made by the defendant railroads joined in by counsel for the other defendants, that these documents were internal documents, immaterial and hearsay, and on page 9 of this memorandum of opinion that you rendered on December 2, 1959, on page 5, rather, those objections are overruled.

> 'The Soo line memoranda are to be considered admissible there and Your Honor has changed his ruling again, and it occurs to me, and I say it again with all due deference, that no favorable ruling that we have gotten in the past from you will stick, but every unfavorable ruling will be reiterated, and I don't think that is a fair trial.' "

Repeatedly expressing deference, respondent made inquiry of the court about a ruling which he obviously intended to inform the court was confusing to him. We are inclined to think that respondent was sincere in his attitude because of the rather dubious language used by the court in the memorandum about which he inquired. This is the court's own language from the memorandum:

> "All documents the objections to which are here overruled are rendered not inadmissible only to the extent that the Court will permit plaintiff to tender them for admission into evidence at the time of trial. Documents here ruled inadmissible may not be so tendered at the trial. Whether any document, not by these rulings rendered inadmissible, will be admitted into evidence at the trial is a question reserved by the Court for ruling at the time of its tender by plaintiff at the trial.
>
> "Any document to which defendants' objections are here sustained may, upon approval by the Court, become admissible, notwithstanding, only for purposes of impeachment, and then only to prove the inaccuracy of specific facts testified to on direct examination, in which case the document herein ruled inadmissible may be admitted into evidence if it patently and explicitly, not as a matter of inference or implication, states the fact concerning which the direct testimony is being controverted."

In this court it is the contention of counsel for respondent that the meaning of this language is that rulings against the plaintiff were final, whereas rulings against the defendant were tentative only, and that the defendants,

and they alone, were to have the privilege of a second ruling. Whether this be correct or not, we believe that a situation existed which created a doubt in respondent's mind and that he was in good faith attempting, with *due deference*, to clear up that doubt by a reasonable inquiry and that his conduct in that regard was respectful and did not constitute contempt of court.

3. Specification 3 reads as follows:

> "Repeatedly during the course of the trial Lee A. Freeman conducted himself in a contumacious manner by employing a tone of voice and an attitude indicating contempt and defiance of the Court, by sneering and laughing on occasions when the Court ruled against him and by disregarding admonitions of the Court with respect to his conduct before the jury."

It contains no citation of any part of the record to support it and it is too general to require an answer by respondent or a definitive ruling by this court, as we held in reference to specification 7 in No. 13175, *In the matter of criminal contempt of Thomas C. McConnell*, July 6, 1961.

4. Specification 4 reads as follows:

> "On January 26, 1960, in the presence of the Court before the jury was impaneled during the course of a hearing on its memorandum dated December 4, 1959, which constituted the Court's rulings on the admissibility of numerous documents which had been tendered by the plaintiff for use in the trial and objected to by the defendants, Mr. Freeman, among other things, referred to several of the Court's December 4th rulings as demonstrating 'a sardonic sense of humor', * * * thereby charging the Court with bitter, heartless, scornful, insincere and disdainful conduct. The Court referred specifically to the above quoted statement of counsel (at page 9 of the memorandum), as well as to other

> abusive remarks of counsel, and ruled that there was no merit to counsel's objections to and arguments upon the Court's pre-trial memorandum, dated December 4, 1959 aforesaid."

It will be noted that the events involved in this specification occurred more than three months before the trial in *Parmelee* v. *Keeshin* began. The phrase "a sardonic sense of humor" appeared, when spoken by respondent, in the following context:

> "* * * You exclude the Forgash documents, and I have already discussed that, but here I must call your attention to 14 and 16 where you have excluded all of the documents except Forgash Exhibit 1, and Ryan Exhibit No. 1.
>
> "This, I construe as a sardonic sense of humor, because those two documents are the subpoenas that we served on Forgash, the subpoena that we served on Ryan to produce these documents that you now say are inadmissible, and you tell us that we can, before the jury, present to the jury the subpoenas that we served on them and nothing else.
>
> "I think it was the result of a misapprehension, your Honor. I think it was the result of a misconception of what was involved here. I think you have been imposed upon, as I say."

Read in context, we have difficulty in attributing to the phrase "a sardonic sense of humor" misconduct which obstructed the court in the performance of its judicial duty.[2] The presence of that element must clearly be shown in every such case where the power to punish for contempt is exerted. *Ex parte Hudgings*, 249 U. S. 378, 383. Moreover, in determining whether there has been any obstruction of the court's performance of its

2. Vol. VIII, The Oxford Dictionary, 110, points out the path which "sardonic" has traveled in English literature. For instance, in 1675, Hobbes *Odyssey xx*, 276 recorded: "Then Smil'd Ulysses a Sardanique smile."

judicial duties, the reasonably to be expected reactions of those in the courtroom to the words or acts under scrutiny are relevant. If there was such obstruction resulting from what respondent said, that should be ascertained from the record of what occurred at the time. Citation for direct contempt should not be delayed for months. It should spring fresh from the alleged obstruction of the court's performance of its judicial duty, although adjudication and punishment might well await the convenience of the court's business. The record suggests that the words used by respondent were not considered by the judge as derogatory when spoken. At that time he took no exception, made no protest, admonition or request for apology, and gave no notice of the remark. Instead the judge proceeded with a discussion about the documents under consideration.

The court on March 10, 1960, more than two months after the words were spoken, referred *inter alia* to the statement that it had "a sardonic sense of humor" and disposed of that and other matters by saying merely that "The court is unable to find any basis for these charges."

The court waited more than five months after the alleged contempt had been committed, and only then specified the contempt charges and entered the order from which this appeal has been taken. The very fact that in the meantime various proceedings, including a long-drawn-out trial, had occurred, is rather conclusive evidence that these words of respondent in no way obstructed the court in the performance of its judicial duty, an element that must be clearly shown in every case where the power to punish for criminal contempt is exercised. The language of specification 4 suggests that, when the processes of the court in this litigation had at a later date ground to a conclusion, the judge

adopted a dictionary definition of the word "sardonic" and embodied it in specification 4. We must however bear in mind that the test of contumaciousness of words spoken during a court proceeding is their effect as contemporaneously understood by those who heard the words spoken in the courtroom. This includes the judge as well as other persons present. If no one in the courtroom either knows the meaning of the words spoken or then consults a dictionary as to their meaning, we doubt whether justice has suffered and that a contempt has occurred. However that may be, the meaning of a spoken word used in a courtroom during a judicial proceeding cannot months later be learned and used retroactively to punish the speaker when only he (if anyone) knew the meaning of the word when he used it.

On the record before us, we hold the respondent was not proved guilty under specification 4.

In accordance with the reasons which we have stated, the order from which this appeal has been taken is reversed.

ORDER REVERSED.

UNITED STATES COURT OF APPEALS
for the Seventh Circuit.
Chicago 10, Illinois

Thursday, July 6, 1961.

Before

Hon. F. Ryan Duffy, Circuit Judge.
Hon. Elmer J. Schnackenberg, Circuit Judge.
Hon. Latham Castle, Circuit Judge.

PARMELEE TRANSPORTATION COMPANY, a Delaware corporation,
Plaintiff,
vs.
JOHN L. KEESHIN, ET AL.,
Defendants.

No. 13175
In the Matter of Criminal Contempt of THOMAS C. McCONNELL,
Repondent-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, Reversed as to respondent Thomas C. McConnell, except as to specification 6 therein only as to which it is Affirmed, and that this cause be and it is hereby, Remanded to the said District Court with instructions to vacate the sentence imposed and in lieu thereof to impose a fine of One Hundred Dollars ($100.00) on said specification 6, to be paid by respondent Thomas C. McConnell to the Clerk of the District Court, pursuant to law, in accordance with the opinion of this Court filed this day.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 498

PARMELEE TRANSPORTATION COMPANY,
A DELAWARE CORPORATION,
Plaintiff

vs.

JOHN L. KEESHIN, ET AL.,
Defendant

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL,
Petitioner

BRIEF FOR PETITIONER

THOMAS C. McCONNELL,
134 South LaSalle Street
Chicago 3, Illinois,
Pro Se

THE BLAKELY PRINTING COMPANY, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 498.

PARMELEE TRANSPORTATION COMPANY,
A DELAWARE CORPORATION,

Plaintiff,

vs.

JOHN L. KEESHIN, ET AL.,

Defendants.

IN THE MATTER OF CRIMINAL CONTEMPT OF
THOMAS C. McCONNELL,

Petitioner.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The majority and dissenting opinions of the United States Court of Appeals for the Seventh Circuit, rendered on July 6, 1961, are reported at 294 F. 2d 310 and are printed in the record hereto (R. V, 58-70).

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on July 6, 1961 (R. V, 70-1). A petition for rehearing was denied on October 5, 1961 (R. V, 71). Jurisdiction of this Court is exercised pursuant to 62 Stat. 928, 28 U. S. C. § 1254(1) and Rule 22(2) of the Rules of the Supreme Court of the United States, and by the petition for certiorari filed October 14, 1961, and granted by this Court on December 11, 1961 (R. V, 72).

QUESTIONS PRESENTED FOR REVIEW.

1. Can a lawyer be summarily sentenced for criminal contempt where no obstruction to the performance of judicial duty is shown as required by subsection (1) of 18 U. S. C. § 401, limiting the power of a judge to punish for criminal contempt to "Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice"?

2. Does the provision "Disobedience or resistance to its *lawful* * * * order" as used in subsection (3) of 18 U. S. C. § 401 encompass the attempt of a lawyer to make an offer of proof in exact compliance with Rule 43(c) of the Federal Rules of Civil Procedure by stating, in the face of the trial court's abrogation of that rule, that he, the lawyer, would continue to ask questions in exact accord with that rule unless stopped by a bailiff? (Italics ours.)

3. Can a lawyer be sentenced for criminal contempt under Section 42(a) of the Federal Rules of Criminal Procedure by the judge before whom the contempt was alleged to have occurred where it appears that the Court considered the alleged contempt as a direct attack upon himself and where it was conceded by the sentencing court that no emergency of any kind was present?

STATUTE AND RULES INVOLVED

1. Act of June 25, 1948, c. 645, 62 Stat. 701, 18 U. S. C. § 401, providing in pertinent part:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—(1) Misbehavior of any person in its presence or so near thereto *as to obstruct the administration of justice;* • • • (3) Disobedience or resistance to its *lawful* writ, process, order, rule, decree or command." (Italics ours.)

2. Rule 42 of the Federal Rules of Criminal Procedure, Rule 42, 18 U. S. C., providing:

> "(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.
>
> "(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the

contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

3. Rule 43(c) of the Federal Rules of Civil Procedure, Rule 43(c), 28 U. S. C., providing in pertinent part:

> "(c) Record of Excluded Evidence. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon * * *."

STATEMENT OF THE CASE.

Petitioner is a member of the bar of this Court and, as shown by this Court's records, has practiced law for thirty-seven years in the State of Illinois.

The decision of the Court of Appeals was rendered after an appeal by petitioner from an order entered by Judge Julius H. Miner on June 30, 1960, adjudging petitioner guilty of criminal contempt and sentencing him to confinement for a period of ten days on each of three specifications described in the contempt order, said sentences to run concurrently. The contempt order (R. V, 6-11) was entered by Judge Miner under Rule 42(a) of the Federal Rules of Criminal Procedure, and the alleged acts of contempt occurred during the trial of the case of *Parmelee Transportation Company* v. *John L. Keeshin, et al.*, in which case a petition for certiorari was denied by this Court on December 11, 1961 (Docket No. 431).

Of the three specifications for contempt entered by the trial court against this petitioner, two of them, designated as Specifications 5 and 7, were held not to constitute any contempt as a matter of law by unanimous decision of the Court of Appeals and they are not involved here. Four specifications of contempt entered by Judge Miner against petitioner's co-counsel, Lee A. Freeman, were likewise dismissed as not constituting contempt as a matter of law (*In the Matter of Criminal Contempt of Lee A. Freeman*, 292 F. 2d 806 (C. A. 7, 1961)).

The third specification, designated as Specification 6, was affirmed in part by the vote of two of the judges of the Court of Appeals with Judge Duffy, Circuit Judge, dissenting. He said (R. V, 69-70):

"I agree with the majority opinion that the convic-

tions under Specifications 5 and 7 should be reversed. * * *

"I would also reverse as to Specification 6. * * * * * * There was no obstruction in the administration of justice. In my view, the conviction for criminal contempt under Specification 6 should also be reversed."

The majority opinion affirmed the holding of contempt on Specification 6, although reducing the punishment from a jail sentence to a fine of $100.00. As to that, the majority opinion said (R. V, 63):

"As to specification 6, we hold that with the exception of one statement attributed to respondent, nothing with which he is charged has been supported by proof of contumaciousness or disrespect.

"The exception in specification 6, to which we have just referred, charges that respondent said:

"'* * * We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us'."

In order to decide the issues presented in this case, it is necessary for this Court to have before it the circumstances preceding and under which petitioner made the above quoted remark.

The action out of which the alleged contempt arose was brought by Parmelee Transportation Company under the federal antitrust laws against John L. Keeshin, Keeshin's company, Railroad Transfer Service, Inc., Hugh W. Cross, former Chairman of the Interstate Commerce Commission, six railroads, constituting a committee chosen by twenty-one railroads comprising all the railroads having passenger terminals in Chicago, and, finally, the presidents of four of these six railroads, to recover damages occasioned by reason of the defendants' violations of the antitrust laws (R. I, 5-8).

It was alleged (R. I, 12-18) and offers to prove were attempted, that in order to switch the transfer contract to carry railroad passengers from and between Chicago railroad terminals from the Parmelee Company, which had performed the service for many years, to a new company to be organized by Keeshin, the defendant, Hugh W. Cross, then a member of the Interstate Commerce Commission, importuned the six defendant railroads to agree with Cross and Keeshin to cause the railroads terminating in Chicago to enter into an exclusive five-year contract with a corporation to be formed by Keeshin, regardless of the cost and terms proposed by Keeshin (R. III, 990-1024, 1042-90).

It was alleged (R. I, 12, 14) and plaintiff attempted to prove that Hugh W. Cross, as a member of the Interstate Commerce Commission, had pending before him matters in which the defendant railroads had financial interests running into millions of dollars (R. III, 996-7, 1003-5) and that Cross acted in violation of his duty as a member of the Interstate Commerce Commission (R. III, 1023) and also in violation of Section 202 of the United States Criminal Code.

The complaint further alleged (R. I, 18) that, as a result of an investigation of his conduct in this regard by the United States Senate Committee on Government Operations, Permanent Subcommittee on Investigations, the defendant, Cross, resigned his position as Chairman of the Interstate Commerce Commission.

Prior to the time Judge Miner was appointed to the bench, the defendants made a motion to dismiss the complaint which was heard and denied by the late Judge Philip L. Sullivan. His opinion is reported at 144 F. Supp. 480.

After approximately three years of discovery proceedings in which thousands of documents were inspected and

reproduced, and thousands of pages of depositions were taken (R. IV, 1733) and at a cost to the plaintiff of many thousands of dollars, the case came on for trial before Judge Miner in the Spring of 1960.

Shortly before the trial was to commence, Judge Miner ordered a separate trial, over the objection of petitioner, of an issue he designated as the issue of public injury, asserting as a precedent therefor the decision of the Court of Appeals for the Seventh Circuit in *Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co., et al.*, 273 F. 2d 196 (R. I, 389, 432-3). Subsequently, that case was reversed by a *per curiam* decision by this Court (364 U. S. 656, 660, 5 L. Ed. 2d 358, 361 (1961)).

Judge Miner ruled, however, that plaintiff had to show that the public had suffered economic injury before the plaintiff would be permitted to prove the issues set forth in the complaint, which issues were subject to a jury demand filed by plaintiff. Judge Miner said (R. I, 441-2):

> "This is a case where public injury must be established as a prerequisite for sustaining the plaintiff's right to recover. * * * This Court has adopted a rule for the separation of issues and is determined to enforce it wherever lawful and proper. * * * Accordingly, I now order the parties to proceed on the single issue of public economic injury."

Subsequently, the court ruled (R. I, 448) that the issue of public injury "is a separate and distinct issue, and we will rule that any other evidence that is being offered independent and outside of that one issue is irrelevant, immaterial, and not admissible, and improper." Under this ruling, all evidence offered to show a monopoly or a conspiracy was excluded (R. II, 581-2).

Subsequently, Judge Miner told the jury (R. II, 619):

> "I want to explain to the jury there is nothing mysterious about what we are discussing here. The

> Court has limited the issue to one question, whether or not there is public injury, and all I am trying to do here, and I don't want you to be mystified by it or counsel's objections. Each one is protecting their respective interests properly and there is no objection to that * * * I am not going to permit any of the conspiracy on this immediate issue."

The court also said (R. I, 433) that he was dividing up the issues "not to save any time primarily, but to squeeze unnecessary sympathy or prejudice from the trial of the issues where sympathy and prejudice do not belong and have no place therein."

In the face of allegations in the complaint concerning the defendant Hugh W. Cross, the trial of which issues were by jury demand properly before a jury, Judge Miner said (R. II, 727):

> "* * * any conversation with Mr. Cross, any meetings with Mr. Cross, are not part of the issues before me, and are inadmissible and improper * * *."

After the court had so limited the issue to be tried to one of public injury, petitioner offered to stipulate with opposing counsel to the making of offers of proof outside the presence of the jury, thereby obviating the necessity of asking any questions pursuant to Rule 43(c) (R. I, 443-6). This would have made the colloquy and remarks of petitioner assigned as contumacious in Specification 6 unnecessary. This offer was unequivocally refused by defendants' counsel (R. II, 451-2). It was not only refused, but opposing counsel insisted that any offer of proof on the excluded conspiracy issue had to be made in literal compliance with the provisions of Rule 43(c) of the Federal Rules of Civil Procedure. This rule required the asking of a question of a witness in the presence of the jury, the ruling of the court on any objection made to the question and the sustaining of such objection as a

condition to the making of an offer of proof outside the presence of the jury. The late Floyd Thompson, defendants' chief counsel, stated (R. II, 598):

> "* * * We are not going to sit still for a moment and have an offer of proof made that is not directed to a question pending before a witness who is on the stand because that is exactly what the rule says * * *."

Subsequently, in response to objections by defendants' counsel, Judge Miner admonished petitioner's co-counsel, Lee A. Freeman, not to read questions referring to Cross, which Freeman was attempting to ask as a preliminary to an offer of proof (R. II, 731-2).

> "By the Court: It is becoming obvious that the repetition of question after question about the matter on which the Court has ruled is not competent and proper as distinguished from an offer of proof. * * *
>
> "By Mr. Freeman: Excuse me. I have only this problem, as Mr. McConnell has well stated it. The statute controlling in this regard is Section Rule 43(c) of the Federal Rules of Civil Procedure. * * * You will also recall that when we sought to make an offer of proof, for example in the case of Mr. Fencht, who later took the stand, Mr. Thompson objected as did Mr. Owens and Mr. Meserow and Mr. Keating, to the form of the offer. We didn't have a witness there. We were not asking him a question to which there could be an objection. We find ourselves in an uncomfortable position of both being accused of bad form in making the offer of proof and being accused of bad form when we ask the question. I think we have to try to protect our record by asking the question.
>
> "By the Court: I will not object, and I will permit your form of offer of proof in the absence of the jury by overruling their objections to the form. * * *"

Judge Miner was thus stating that he was going to obviate the necessity of asking the questions in the presence of the jury as required by Rule 43(c) of the Federal Rules

of Civil Procedure by overruling defendants' objections based on that rule. Realizing that this would destroy the plaintiff's offers of proof because not made in accord with the provisions of a rule which the court could not waive, petitioner entered the discussion and said (R. II, 732):

> "Their objection is right. They have made a sound objection to proceeding without the witness or without the deposition, and we have to make a record, and your rulings are going to be reviewed."

In this way, petitioner was saying that overruling a valid objection made by defendants' counsel was subject to review and that the trial court's attempt to abrogate the rule did not help the petitioner in making a record for review but, on the contrary, prevented petitioner from making such a record.

There then followed the colloquy assigned as the basis for the contempt designated as Specification 6. Parenthetically, neither petitioner nor his co-counsel, Lee A. Freeman, attempted to go further with this questioning. As Circuit Judge Duffy states in his dissent (R. V, 69):

> "* * * The statement made by McConnell was followed almost immediately by a recess. When the court session was resumed, Mr. McConnell complied with the Court's ruling, and did not persist in asking the particular questions."

Just prior to the recess, the following colloquy occurred between the court and petitioner (R. II, 735):

> "By Mr. McConnell: We have a right to ask these questions.
>
> "By the Court: You have a right to your say, but I have ruled against it, and you may make your record.
>
> "By Mr. McConnell: We can't make the record without asking the questions. That is the point."

Subsequently, petitioner and his client were hamstrung on the appeal by thus being prevented from making an offer of proof. In a formal written opinion filed *sua sponte* by Judge Miner at the end of the case, he said (R. IV, 1750):

> "The complaint also alleges that in order to induce the railroads to vote in favor of Keeshin's proposal, Cross promised to give them favorable consideration on matters pending before the Interstate Commerce Commission, and that he did give them favorable consideration. It is to be observed that these allegations found no support in plaintiff's elaborat offers of proof * * *."

Actually, the offers of proof which petitioner's co-counsel, Lee A. Freeman, was attempting to make at the time of the alleged contempt concerned Cross' participation in the alleged conspiracy (R. II, 719-32). A great many other attempts to offer proof on this conspiracy also were thwarted by the trial court (R. II, 590, 592, 593, 597, 598, 603, 616, 626, 662). The name "Cross" invariably brought an adverse ruling to any offer of proof (R. II, 606, 610, 611, 614, 619, 627, 628, 629, 632, 638, 639, 640, 662, 663, 700, 709, 720, 721, 725, 727, 728, 729, 739, 740).

Not only, as shown above, did the trial court take advantage of deficiencies in the offers of proof which he himself had created, but the majority opinion of the Court of Appeals likewise uses such alleged deficiencies in the offers of proof as the basis for sustaining Judge Miner's dismissal of the *Parmelee* case (292 F. 2d 794, 803-4).

In this state of the record, it is abundantly clear why petitioner felt compelled to insist upon asking questions to preserve his client's right to make offers of proof in accord with Rule 43(c) of the Federal Rules of Civil Procedure.

Prior to the alleged contempt, petitioner had stated to Judge Miner the following (R. II, 586):

> "The rules say how I have to do it, and I am bound by the rules. Your Honor is bound by them and counsel are bound by them, and there is nothing I can do about it."

Later in the trial, Judge Miner expressly conceded that petitioner was right in his position when, in addressing defendants' counsel, he said (R. III, 935):

> "* * * I don't know what you offered to stipulate or what you decline to stipulate except for one thing that I do know: That in the absence of a stipulation, the cases as I read them require the presenting of a witness to ask him some questions, and when I decline to let him answer, then they can proceed with the offer of proof."

To this, defendants' chief counsel replied (R. II, 935):

> "There isn't any question about that. All of us agree with that."

Ironically, it now appears that petitioner did not act with enough resolution, because his failure to proceed with the questions on the Cross issue apparently resulted in both the trial court (R. IV, 1750, 1754-5) and the Court of Appeals (292 F. 2d 794, 803-4) finding fatal deficiencies in petitioner's offers of proof as a reason for dismissing the *Parmelee* suit.

Both the majority and dissenting opinions in effect hold that there was no obstruction to the administration of justice in petitioner's remarks which have been held to constitute contempt.

The majority opinion, in referring to Specification 5, said (R. V, 63):

> "In the case at bar the order from which the appeal was taken contains no finding that respondent's con-

> duct tended to obstruct or continued to obstruct the administration of justice, although we do not base our decision on this omission. Rather we think that its absence strongly indicated that the district court could find no support in the record for such a statement. Actually it appears that the specifications upon which the order was based were not made until several weeks after the trial in question had occurred."

The dissenting opinion states (R. V, 70):

> "Nevertheless, Mr. McConnell did comply with the Court's order. At that point there was no interference with the conduct of the trial. There was no obstruction in the administration of justice."

The majority opinion also says (R. V, 62):

> "* * * We are here concerned with the question of whether respondent as an attorney conducted himself properly in an attempt to represent his client. It was his right as well as his duty to firmly and respectfully advance plaintiff's claims and assert its rights. *In so doing, he had as much right to be in the courtroom and to act as did the judge.* He had a right, when the court ruled that he could not introduce evidence, to make offers of proof thereof, to the end that, in case of an appeal, a proper basis for a review might appear in the record." (Italics ours.)

The sole method of making the record which the Court of Appeals says petitioner had the right and the duty to make is stated in Rule 43(c) of the Federal Rules of Civil Procedure promulgated by this Court. That even the trial court recognized that petitioner was not trying to obstruct the proceedings but was acting in good faith appears from remarks which he made on the record after the incident. He said (R. III, 1109):

> "* * * I have never charged and do not charge now and never will charge any bad faith in this case on the part of plaintiff's lawyers nor on defendants'."

The instant record shows that all petitioner sought to do or stated he was going to do was to ask questions in exact compliance with Rule 43(c) in a situation where he was being whipsawed between objections of opposing counsel and the trial court's erroneous rulings.

The ruling of the Court of Appeals sought to be reversed here, in so far as it holds petitioner in contempt, threatens the destruction of a litigant's right to make a proper offer of proof. Here it has resulted in the dismissal of a suit involving many millions of dollars and involving questions of large public import under the antitrust laws. It is now apparent that under the Court of Appeals' ruling there is no way a lawyer can preserve a record for the review of his client's case if the trial court decides to set aside the Rules of Civil Procedure unless the lawyer is willing to subject himself to a sentence of criminal contempt.

SUMMARY OF ARGUMENT

I.

Recognizing that summary power to punish for contempt is an inroad on the safeguards to liberty guaranteed by the Bill of Rights, Congress limited the power of the federal judiciary to punish for contempt to misbehavior or disobedience of a lawful order which obstructs the administration of justice, and the instant record shows neither disobedience to a lawful order nor an obstruction to the performance of judicial duty. In fact, all it shows is an attempt on the part of petitioner to comply literally with the provisions of Rule 43(c) of the Federal Rules of Civil Procedure, at least until stopped by an unequivocal order of the trial court. It is the contention of petitioner that since he had a right to proceed in accordance with the provisions of such rule, particularly when compliance therewith was insisted upon by opposing counsel, such attempt could not constitute contempt as a matter of law.

All the judges in the Court of Appeals decisions have held as a matter of law that petitioner had a right to make an offer of proof in accord with the rules promulgated by this Court. It is the contention of petitioner that if he had a right to make such an offer, an attempt to so do was not an obstruction to the administration of justice, particularly where, as in the instant case, petitioner's statement subsequently resulted in the decision by the trial judge that petitioner was entitled to comply with the rule.

II.

While petitioner was not guilty of contempt as a matter of law, the record shows that the matter should have been heard by an independent, unbiased and impartial judge. Out of seven citations of contempt entered against petitioner and his co-counsel only one was found by the Court of Appeals to constitute contempt as a matter of law and that one only partially so and in which the sentence was reduced from ten days in jail to a $100.00 fine. It would therefore appear clear that permitting judges to hear matters in which they desire a conviction is contrary to the decisions of this Court, and that a trial before a judge interested in getting a conviction is no trial at all, and that, therefore, this Court, for the protection of the bar, should clearly enunciate the rule that in such circumstances a contempt charge should be referred to a judge who is not interested in the matter, unless immediate action is required to preserve order in the court.

ARGUMENT

I.

THE PART OF SPECIFICATION 6 OF THE CONTEMPT ORDER ENTERED AGAINST PETITIONER WHICH THE COURT OF APPEALS AFFIRMED DOES NOT CONSTITUTE "MISBEHAVIOR OF ANY PERSON IN ITS PRESENCE OR SO NEAR THERETO AS TO OBSTRUCT THE ADMINISTRATION OF JUSTICE" NOR DOES IT CONSTITUTE "DISOBEDIENCE OR RESISTANCE TO ITS LAWFUL WRIT, PROCESS, ORDER, RULE, DECREE OR COMMAND" AND SO CANNOT BE SUMMARILY PUNISHED AS CONTEMPT AS A MATTER OF LAW.

Recognizing that summary power to punish for contempt is an inroad on the safeguards to liberty guaranteed by the Bill of Rights, Congress limited the power of the federal judiciary to punish for contempt. The present statute (18 U. S. C. § 401) reads in pertinent part as follows:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, *and none other*, as
>
> "(1) Misbehavior of any person in its presence or so near thereto as *to obstruct the administration of justice*; " " ".
>
> " " " " "
>
> "(3) Disobedience or resistance to its *lawful* writ, process, order, rule, decree or command." (Italics ours.)

The history of this statutory provision and the authorities construing it were carefully considered by this Court in *Nye* v. *United States*, 313 U. S. 33, 85 L. Ed. 1172 (1941), where it was held that the statute limited the federal judiciary in contempt cases, to "the least possible

power adequate to the end proposed." *Anderson v. Dunn*, 6 Wheat. (U. S.) 204, 231, 5 L. Ed. 242, 248 (1821). The Court observed that historically the statute included only "that kind of misbehavior which is calculated to disturb order of the court, such as noise, tumultuous or disorderly behavior either in or so near to it as to prevent its proceeding in the orderly dispatch of its business" (p. 50) and further held that "misbehavior" to be considered contumacious had to result in an obstruction to the judicial process. See also *Matter of Michael*, 326 U. S. 224, 227, 90 L. Ed. 30, 33 (1945).

The statute under consideration also limits the power of a court to punish for contempt to "Disobedience or resistance to its *lawful* writ, process, order, rule, decree or command." (Italics ours.)

In the instant case, the Court of Appeals has affirmed a conviction for contempt against petitioner for saying:

> "• • • We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us."

It is the contention of this petitioner that the order of the trial court should be reversed because the trial court had no power to summarily punish for contempt unless (a) the order to which petitioner took exception was a "lawful" order and (b) the incident resulted in an "obstruction to the performance of judicial duty." If either of these elements is absent, it is apparent under the decisions of this Court that the court below was in error in sentencing petitioner for contempt.

A. Judge Miner's Order Abrogating Rule 43(c) of the Federal Rules of Civil Procedure Was Not a Lawful Order.

The Court of Appeals incorrectly states petitioner's position when it says "he intended to physically defy the court to the point that only a superior physical force called upon by the court could prevent him from proceeding" (R. V, 64). We submit that that court has missed the entire point to the position taken by petitioner. Denied the right to proceed according to rule, petitioner was entitled to proceed at least far enough for the record to show he was unequivocally stopped by the court. Since petitioner was only threatening to pursue the exact procedure defined by this Court for the making of offers of proof, it would seem self-evident that petitioner's proposed conduct was entirely lawful, at least to the point of creating proof on the record of an unequivocal direction by the court to stop. As pointed out in Judge Duffy's dissent after obtaining record evidence of such direction petitioner "complied with the Court's ruling, and did not persist in asking the particular questions" (R. V, 69). The fact that petitioner used picturesque language in obtaining such record evidence is, we submit, in the circumstances of this case not a threat to physically defy the court but only a threat to do a lawful act—namely comply with the Federal Rules of Civil Procedure unless unequivocally stopped by the Court.

As has been pointed out in the Statement of the Case, petitioner, in attempting to prosecute an antitrust case, had been improperly relegated to the trial of an irrelevant issue (*Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., et al.*, 364 U. S. 656, 660, 5 L. Ed. 2d 358, 361 (1961)) of so-called "public injury." In the face of the trial court's refusal to permit the conspiracy issue to be tried before a jury, petitioner was trying to offer proof of the conspiracy

issue so that the erroneous ruling of the trial judge could be reviewed.

When petitioner attempted to make these offers of proof, he was met with objections of opposing counsel that such an offer of proof could only be made in accord with the exact provisions of Rule 43(c) of the Federal Rules of Civil Procedure. Opposing counsel said (R. II, 598):

> "* * * We are not going to sit still for a moment and have an offer of proof made that is not directed to a question pending before a witness who is on the stand because that is exactly what the rule says * * *."

In the face of this objection, the trial court and petitioner's co-counsel, Lee A. Freeman, engaged in the following colloquy (R. II, 732):

> "By Mr. Freeman: * * * We find ourselves in an uncomfortable position of both being accused of bad form in making the offer of proof and being accused of bad form when we ask the question. I think we have to try to protect our record by asking the question.
>
> "By the Court: I will not object, and I will permit your form of offer of proof in the absence of the jury by overruling their objections to the form."

Judge Miner was thus stating that he was going to obviate the necessity of asking the questions in the presence of the jury as required by Rule 43(c) by overruling the defendants' objections which were based on that rule. At that stage, petitioner, realizing that this would destroy plaintiff's offers of proof because not made in accord with the provisions of the rule, entered the discussion and said (R. II, 732-3):

> "Their objection is right. They have made a sound objection to proceeding without the witness or without the deposition, and we have to make a record, and your rulings are going to be reviewed."

There then followed the remarks of petitioner upon which the contempt conviction is based.

Immediately following these remarks, there was a recess and the following colloquy took place between petitioner and the court (R. II, 734-5):

> "By Mr. McConnell: * * * I am trying to try a lawsuit. I am being prevented from trying it at every stage of it.
>
> "By the Court: It doesn't call for insults or abuse.
>
> "By Mr. McConnell: I am not making any insults.
>
> "By the Court: You certainly do when you say you will have to be dragged out by a sheriff in stopping you from making the proof. I will stop it.
>
> "By Mr. McConnell: There comes a time when a lawyer has to stand up and state his client's case.
>
> "By the Court: And as a gentleman in the bounds of the law.
>
> "By Mr. McConnell: We have a right to ask these questions.
>
> "By the Court: You have a right to your say, but I have ruled against it, and you may make your record.
>
> "By Mr. McConnell: We can't make the record without asking the questions. That is the point."

Previously, petitioner had stated to the court (R. II, 586):

> "The rules say how I have to do it, and I am bound by the rules. Your Honor is bound by them, and counsel are bound by them, and there is nothing I can do about it."

Later in the trial, Judge Miner expressly conceded that petitioner was right, saying (R. III, 935):

> "* * * That in the absence of a stipulation, the cases as I read them require the presenting of a witness to ask him some questions, and when I decline to let him answer, then they can proceed with the offer of proof."

Later, in addressing opposing counsel, Judge Miner tacitly admitted that his order stopping petitioner from

asking questions was not a lawful order. He said (R. III, 957):

> "* * * I have ruled repeatedly, and again I say with due consideration to your table, counsel has offered to stipulate without any witnesses to make offers of proof, without the jury, without requiring a witness to be on the stand. That was rejected. I am not criticizing you. You have your own reasons for rejecting it. You have a right to reject it. *But you have put me in a position now where I can't say to counsel I know what you are going to do, and you can't do it.*" (Italics ours.)

The Court of Appeals, in discussing the incident and the events which preceded it, said (R. V, 61-2):

> "Respondent explained that he was simply laying a basis in the record for an appeal and that he wished to have the record show the offers that he was making.
>
> "He attempted to follow the usual procedure, which consists of putting a question to a witness in the presence of the jury and, when an objection is made, an offer of proof is made out of the presence of the jury. Finally the court admitted that this procedure followed by respondent was required by 'the cases' as he 'read them'. However, later the court struck from the record several offers of proof bearing upon the charges of conspiracy and monopoly, for the reason that these charges had nothing to do with the question of public injury.
>
> "* * * We are here concerned with the question of whether respondent as an attorney conducted himself properly in an attempt to represent his client. It was his right as well as his duty to firmly and respectfully advance plaintiff's claims and assert its rights. In so doing, he had as much right to be in the courtroom and to act as did the judge. *He had a right, when the court ruled that he could not introduce evidence, to make offers of proof thereof, to the end that, in case of an appeal, a proper basis for a review might appear in the record.*" (Italics ours.)

It must occur to this Court that if petitioner was entitled to make an offer of proof as of right and as a duty to his client, he was entitled to make such offer of proof in accord with Rule 43(c), which provides that questions had to be asked of the witness as a preliminary to the offer of proof outside the presence of the jury.

If petitioner was entitled to so proceed as of right, then it necessarily follows that Judge Miner could not lawfully foreclose that opportunity by ordering petitioner to stop asking the preliminary questions. If opposing counsel had been willing to waive the rule, petitioner might properly have been required to follow the court's directions to ask the questions outside the presence of the jury, but such counsel insisted upon a literal compliance with the rule (R. II, 598). *A fortiorari*, under the very statement of the Court of Appeals quoted above, the direction by the trial court not to ask the questions because he, over the objection of opposing counsel, was going to ignore and abrogate Rule 43(c), could not be a "lawful" order. Since, under the express terms of the statute set forth above, only disobedience to a "lawful" order can be contumacious, it must follow that a mere threat to ask questions in compliance with Rule 43(c), which was never carried out, cannot be held to be contumacious conduct.

A recent decision of the California Supreme Court holds that conduct going far beyond that of petitioner did not constitute contempt as a matter of law. The case is *Cooper v. Superior Court*, 55 Cal. 2d 291, 359 P. 2d 274 (1961) which construes a statute almost identical to the federal statute here involved.

In a murder trial (*People v. Finch*), the petitioner, Cooper, acting as the attorney for Finch, was twice adjudged in contempt for disobeying an order of the trial court to refrain from stating in the presence of the jury

an objection to the making by the judge of comments on the comparative credibility of certain witnesses. The judge had on his own initiative recalled the jury from its deliberations for the purpose of reading a prepared statement embodying such comments. Copies of the statement had *not* been furnished to counsel nor had counsel been permitted to participate in its preparation. The petitioner there contended that in the circumstances of that case, the order that he refrain from stating his objection in the presence of the jury was not a "lawful" order of the court and, hence, it was not a contempt for him to disobey it. The California Supreme Court ruled that the contention was sound and that the judgment should be annulled. The court said (55 Cal. 2d at pages 297-8):

> "* * * Petitioner's disregard of the judge's instruction to 'keep seated and wait until the jury is out to make your objections' without more would clearly amount to disobedience of an 'order . . . of the court.' This, petitioner impliedly concedes but, as noted above, he contends that the order was not a 'lawful' one, and hence that it was not a contempt for him to disobey it.
>
> "* * * Petitioner's argument is that 'Since it is the lawyer's duty to make his objections and other points in his client's behalf, it must follow that he is entitled to a timely opportunity to make them. From this it necessarily follows that the judge is without power to foreclose that opportunity by any order or admonition to sit down or to be quiet or not to address the court."

The court, in reversing the contempt conviction, said (55 Cal. 2d at pages 300, 302-3):

> "* * * It is clear that under the circumstances of the case at bench petitioner, if not required to make, was at least justified in presenting, immediate objection to the hereinabove described procedure followed by the judge * * *.
>
> * * * * *

> "* * * It scarcely seems necessary to point out that, when an attorney is presenting an objection or motion in contested litigation he is engaged in a trial, and reasonable opportunity to prepare and present his motion is as fundamental as is the right to counsel * * *.
>
> "* * * on the stipulated record the judge, more than counsel, appears to have set the stage for the contempt adjudications * * *.
>
> "* * * we are convinced that to uphold the contempt order would tend to erode 'the fundamental interest of the public in maintaining an independent bar.'" * * *"

In the instant case, it is quite apparent from both the majority and dissenting opinions of the Court of Appeals that the trial court's action, more than petitioner's, "appears to have set the stage for the contempt adjudications." In the majority opinion, it is pointed out that it was "the correct contention of respondent that public injury was not a relevant issue * * *" (R. V, 60), and that (R. V, 61):

> "* * * [T]he case of *Parmelee* v. *Keeshin, et al.*, was on trial before court and jury when respondent proposed to make offers of proof outside the presence of the jury. Upon defendants' rejection of plaintiff's suggestion, the court ordered the trial to proceed. Respondent stated that the offers would involve proof of the conspiracy and monopoly issues, which he was advised 'will have to be made outside the presence of the jury'. The court responded: 'That is correct. That is my ruling'."

The dissenting opinion states (R. V, 69):

> "I would also reverse as to Specification 6. The majority opinion describes the difficulties the plaintiff's counsel McConnell encountered in trying to preserve his client's rights. The attorneys for plaintiff were driven to a sense of frustration due to the District Court's rulings on offers of proof. Under such circumstances, it is understandable that an attorney might

say things which should not have been said. I think that was the situation in the case at bar.

* * * * *

"It might be noted that counsel's vigorous insistence on preserving his client's rights bore fruit, as the trial judge later changed his ruling."

Against this background and stripped of all collateral contention, we submit that it clearly appears that Judge Miner's order abrogating Rule 43(c) was an unlawful order.

Petitioner's contention was unequivocally stated by the late Mr. Justice Rutledge, when he said in his dissenting opinion in *United States* v. *United Mine Workers of America*, 330 U. S. 258, 351-2, 91 L. Ed. 884, 943 (1947):

"* * * I know of no decision here which holds * * * that a refusal to obey orders or judgments contravening Congress' mandate is criminal or affords cause for punishment as for contempt.

"* * * It would be also in practical effect for many cases to terminate the litigation, foreclosing the substantive rights involved without any possibility for their effective appellate review and determination.

"This would be true, for instance, wherever the substantive rights asserted or the opportunity for exercising them would vanish with obedience to the challenged order."

Here, as we have already pointed out, petitioner's obedience to Judge Miner's directions resulted in the loss of substantive rights of the Parmelee Company, which were foreclosed "without any possibility for their effective appellate review and determination." Cf. *Ex Parte Fisk*, 113 U. S. 713, 727, 28 L. Ed. 1117, 1122 (1885), where this Court said:

"* * * The Circuit Court was, therefore, without authority to make the orders for the examination of petitioner in this case, and equally without authority

> to enforce these orders by process for contempt. * * * Its orders citing him for contempt and committing him to the custody of the Marshal was without jurisdiction and void, and the prisoner is entitled to his release."

In *Sibbach* v. *Wilson & Co.*, 312 U. S. 1, 16, 85 L. Ed. 479, 486 (1941), this Court said:

> "The District Court treated the refusal to comply with its order as a contempt and committed the petitioner therefor. Neither in the Circuit Court of Appeals nor here was this action assigned as error. We think, however, that in the light of the provisions of Rule 37 it was plain error of such a fundamental nature that we should notice it. Section (b) (2) (iv) of Rule 37 exempts from punishment as for contempt the refusal to obey an order that a party submit to a physical or mental examination. The District Court was in error in going counter to this express exemption."

As we have pointed out, Rule 43(c), under which petitioner was attempting to proceed, was promulgated by this Court pursuant to authority delegated by the Congress under the Act of June 19, 1934, Ch. 651, §§ 1 and 2, 48 Stat. 1064 (now 28 U. S. C. § 2072).

The Federal Rules of Civil Procedure have the force and effect of statutes and are just as binding on the court as they are on counsel. See *American Federation of Musicians* v. *Stein*, 213 F. 2d 679, 686 (C. A. 6, 1954); *Wilson* v. *Daumit*, 179 F. 2d 475, 477 (C. A. 7, 1950).

When Judge Miner abrogated the rule and denied petitioner the right to comply with it, petitioner was whipsawed between the judge's unlawful ruling and the objections of defendants' counsel, and his client's right to make a record on appeal was destroyed. Obviously, a direction which brings about such an untoward result is not a lawful order.

As we have pointed out above, both in the trial court

(R. IV, 1750, 1754-5) and in the Court of Appeals (292 F. 2d 794, 803-4) omissions in petitioner's offers of proof were utilized to justify a dismissal of the *Parmelee* suit. These omissions were occasioned by the trial court's refusal to permit petitioner to make proper offers of proof within the rule.

The reason for the limitation on the power of a federal court to punish resistance to its orders to that of a "lawful" order thus becomes manifest and its justice apparent. In the instant case, petitioner, as we later show, did not actually resist the order beyond the point of drawing an unequivocal direction from the court when the court said, with reference to petitioner's attempt to ask preliminary questions, "I will stop you now, * * *" (R. II, 733).

B. There Was No Contempt Proven Against Petitioner Because There Was No Obstruction to the Administration of Justice.

The Court of Appeals agreed with petitioner that an obstruction in the performance of judicial duty must be shown. It said (R. V, 62-3):

> "* * * Power to punish for contempt is one which must be used sparingly and only when it is clearly demonstrated that the respondent's conduct is contumacious and tends to bring the administration of justice into disrepute, rather than when his conduct is that of a determined level-headed practitioner who is acting respectfully to the court under considerable pressure in a lengthy and important trial.
>
> "18 U. S. C. A. § 401 provides:
>
> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

"(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

* * * * *

"In *Ex Parte Hudgings*, 249 U. S. 378, 383, the court said:

> "'An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted * * *'

"In the case at bar the order from which the appeal was taken contains no finding that respondent's conduct tended to obstruct or continued to obstruct the administration of justice, although we do not base our decision on this omission. *Rather we think that its absence strongly indicated that the district court could find no support in the record for such a statement.*" (Italics ours.)

Circuit Judge Duffy in his dissenting opinion says (R. V, 70):

> "Nevertheless, Mr. McConnell did comply with the Court's order. At that point there was no interference with the conduct of the trial. There was no obstruction in the administration of justice. In my view, the conviction for criminal contempt under Specification 6 should also be reversed."

In describing the setting for petitioner's remarks, Circuit Judge Duffy said (R. V, 69):

> "* * * McConnell's statement occurred during the reading of the deposition of Howard E. Simpson, president of the Baltimore & Ohio Railroad. Simpson was a defendant. One of plaintiff's attorneys was reading portions of Simpson's adverse examination

> to lay the foundation for an offer of proof. The statement made by McConnell was followed almost immediately by a recess. When the court session was resumed, Mr. McConnell complied with the Court's ruling, and did not persist in asking the particular questions."

It thus appears from the decisions of the Court of Appeals that all three judges, after an exhaustive examination of the trial court record, found no "obstruction to the administration of justice." In view of this, we most respectfully submit that under the limitations of the federal statute and the decisions of this Court construing the statute, Judge Miner had no authority or warrant to convict this petitioner of criminal contempt.

II.

WHILE, AS SHOWN, PETITIONER WAS NOT GUILTY OF CONTEMPT AS A MATTER OF LAW, IN SO FAR AS ANY FACTUAL ISSUE WAS PRESENTED, IT SHOULD HAVE BEEN HEARD BY AN IMPARTIAL JUDGE.

As we have heretofore pointed out, if Judge Miner's order to which petitioner took exception was unlawful, there could be no contempt as a matter of law. However, if this Court should hold that such order was lawful and that petitioner's conduct constituted an obstruction of justice, there would still remain the issue of whether petitioner was acting in good faith in an effort to protect the rights of his client.

As stated in the case of *Gallagher* v. *Municipal Court of the City of Los Angeles*, 31 Cal. 2d 784, 788, 192 P. 2d 905, 908-9 (1948):

> "* * * [A] mere mistaken act by counsel cannot render him in contempt of court. Even if a legal proposition is untenable, counsel may properly urge it in good faith. * * *"

In the instant case, petitioner still sees no way in which he could have made a record on appeal when denied the procedure set forth in Rule 43(c) unless permitted the right to stand his ground against a hostile ruling. As petitioner said to Judge Miner (R. II, 586):

> "The rules say how I have to do it, and I am bound by the rules. Your Honor is bound by them, and counsel are bound by them, and there is nothing I can do about it."

If petitioner was wrong in his statement that the trial judge was bound by the rules, still the question remains as to how he was going to make a record for his client. If he acted in good faith, it is difficult to see how he could be in contempt. Even Judge Miner did not question petitioner's good faith. He said (R. III, 1109):

> "I have never charged and do not charge now and never will charge any bad faith in this case on the part of plaintiff's lawyers nor on defendants'."

In this situation, it would seem apparent that Judge Miner should never have dealt summarily with this matter unless some emergency was shown. The record completely negatives any such showing.

At the end of the Parmelee trial, Judge Miner orally stated that he was holding petitioner in contempt for making "direct attacks on the Court" (R. IV, 1718). At the same time, he said, "There is no emergency about it" and postponed the imposition of sentence for six weeks to June 30, 1960 (R. IV, 1718). The order and certificate entered at that time represented the first time any specifications were charged against petitioner (R. V, 6-11). As the Court of Appeals said (R. V, 63):

> "* * * Actually it appears that the specifications upon which the order was based were not made until several weeks after the trial in question had occurred."

In the court below, petitioner urged, as he had before Judge Miner (R. V, 11-19), that this matter should have been referred to an impartial judge. The Court of Appeals overruled this contention and held that the trial court did not have to send the case to the Executive Committee for reassignment and in effect held that the rule in *Sacher* v. *United States*, 343 U. S. 1, 96 L. Ed. 717 (1952), is the law and is not modified by this Court's decision in *Offutt* v. *United States*, 348 U. S. 11, 99 L. Ed. 11 (1954). The Court of Appeals in refusing to follow the *Offutt* case, said (R. V, 67):

> "In the present appeal, while what we have said herein has not been in entire approval of the conduct of the district court, we do not find that he was personally involved in controversy with the respondent or that in his rulings leading to the orders appealed from he was actuated by personal enmity toward either of the lawyers held in contempt. Accordingly we do not feel that the *Offutt* case requires that upon the record before us there should be a remandment for retrial before another judge."

This statement shows that the Court of Appeals has failed to comprehend the rationale of the *Offutt* case. With all due deference to this Court, we believe this to be that whenever (a) there is no emergency and (b) the trial court believes he has been under direct attack by a lawyer, he should not be permitted to hear the contempt issue himself. We believe a fair reading of the *Offutt* case compels this conclusion.

As we have pointed out, both the elements required are present here. That in the instant case there was no necessity for immediate punishment to prevent "demoralization of the court's authority before the public" is conclusively shown from the following colloquy which occurred during the trial between the court and petitioner (R. II, 591):

"By Mr. McConnell: If your Honor tells me I can't

> do something, I am not going to get in contempt of court just to be funny about it.
>
> "By the Court: Oh, no, I never dreamed of anything like that—."

and, again, when the court said (R. III, 1035):

> "I have not said it is in bad faith. I think I have defended your position by saying as long as you are offering it on that label, I have no choice but to accept it, and it is in good faith, and I will tell you why it is in good faith. It is your honest contention, and I recognize it, that public injury embraces that type of evidence, and I am in no position at this time to say yes or no * * *."

The court further said (R. III, 1110):

> "I want to say this also, that you and I differ so clashingly on what is the law of antitrusts. * * * I disagree with it, and I will so state in my opinion. There has to be more than that. There has to be within the interpretation of Congress and this is not it. We have an honest disagreement."

It can be seen from the above that not only was there no conduct which it was necessary to punish immediately, but that the comments of the trial judge concede that the positions which petitioner had taken were positions which were proper and within the limits of a lawyer's responsibility to his client and to the court.

In the instant case, there are other considerations which require a statement by this Court that the rules set out in the *Offutt* case should have been followed. Here, four specifications of contempt against Lee A. Freeman, petitioner's co-counsel, and two specifications against this petitioner, were found by the Court of Appeals not to constitute contempt as a matter of law. On the one specification affirmed by the Court of Appeals, there was a strong dissent by a former Chief Judge of the Court. We can only assume that if the case had been reassigned to another

trial judge, who had no bias or interest in the matter, the contempt at least would have been limited to what is presented here.

Further, the trial judge wrote a diatribe, unsupported by a single record reference, in which he castigated petitioner by saying (R. V, 7):

> "* * * both attorneys for the plaintiff herein, embarked upon a course of unprofessional, unethical, intimidating, insulting, defiant, unfair and improper behavior, to foist their will upon the Court and jury and to dominate the course of procedure herein without regard to an honest and impartial administration of justice."

The Court of Appeals said (R. V, 68):

> "Inasmuch as the court's order must stand or fall on the specifications, the language in the preface is unimportant * * *."

While it may be unimportant to the Court of Appeals, this Court must realize that such unjustified language, not supported by the record, assumes considerable importance in the professional standing of a practicing lawyer. The trial court's remarks were given widespread newspaper publicity. The harm done can no more be reversed than a "blown horn can be unblown". While what has happened to petitioner is probably of no great moment, at this late stage in his career, still what he has experienced in the instant case should not be permitted to happen to other members of the bar who may have most of their professional lives ahead of them.

The instant proceeding took another novel turn. Obviously, Judge Miner regarded the whole contempt proceeding as personal to him for at the time he imposed the ten-day jail sentence on petitioner and his co-counsel, he stated (R. IV, 1722):

> "I will enter my own motion for suspension of it, if you folks will decide to enter or file a petition of retraction and apology."

Such an apology would have admitted guilt to charges of criminal contempt, *six of which were dismissed by the Court of Appeals as not constituting contempt as a matter of law.*

The statute which authorizes punishment for contempt (18 U. S. C. § 401) says that a contempt may be punished by either fine or imprisonment. There is no provision in that statute that an attorney may be humiliated by a forced apology for something he did not do under the threat of a jail sentence. Compromising the good standing of a member of the bar and destroying a plaintiff's case, as was done in this instance, obviously brings the entire judicial process into disrepute.

If the rule of the *Offutt* case had been applied here, this result could never have occurred. We submit that the self-respect of the members of the bar and the dignity of the courts are involved in this issue because *a trial before a judge interested in getting a conviction is no trial at all (In Re Murchison*, 349 U. S. 133, 99 L. Ed. 942 (1955)).

The end result of Judge Miner's order to which petitioner took strenuous exception was not only an invasion of petitioner's rights, but, as we have pointed out above, it obviously prejudiced and destroyed the client's case. This Court said in *Sacher* v. *United States*, 343 U. S. 1, 13, 96 L. Ed. 717, 726 (1952):

> "* * * But that there may be no misunderstanding, we make clear that this Court, if its aid be needed, will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of advocate on behalf of any person whatever."

We most respectfully submit that the instant record presents a case where such aid should be granted.

CONCLUSION

As we have pointed out in the petition for certiorari, a serious question in the administration of justice in the United States courts is presented here. The instant record shows in a dramatic way the effect on a client's rights of the denial of a lawyer's right to make a record on appeal pursuant to rules promulgated by this Court.

Here, the lawyer's client was not only denied due process of law, but the petitioner was sentenced to jail for attempting to make for his client a proper record on appeal. Such procedure not only destroys a litigant's rights but will result in the destruction of an independent bar.

We submit that the conviction for criminal contempt under Specification 6 should be reversed.

Respectfully submitted,

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No. 498

In the Supreme Court of the United States

OCTOBER TERM, 1961

IN THE MATTER OF CRIMINAL CONTEMPT OF THOMAS C. McCONNELL, PETITIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the majority of the court of appeals (5 R. 58–69) [1] and the opinion of Circuit Judge Duffy, dissenting in part (5 R. 69–70), are reported at 294 F. 2d 310.

JURISDICTION

The judgment of the court of appeals was entered on July 6, 1961 (5 R. 70–71). A petition for rehear-

[1] The first four volumes of the five-volume record (referred to herein by "R." preceded by the volume number) consist of the record of the civil proceeding (*Parmelee Transportation Company* v. *John L. Keeshin, et al.*; see the Statement, *infra*, pp. 4, 7–9) out of which the criminal contempt matter here involved arose. The fifth volume contains the proceedings peculiar to the contempt matter. The pagination of volumes 1–4 is continuous from p. 1 to p. 1765; that of volume 5 starts anew with p. 1.

ing was denied on October 5, 1961 (5 R. 71). The petition for a writ of certiorari was filed on October 14, 1961, and was granted on December 11, 1961 (5 R. 72; 368 U.S. 936). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the threat of an attorney during a trial, in open court and in the presence of the jury, to continue a course of conduct, from which he and his co-counsel had been categorically ordered to desist, "unless some bailiff stops us," was contemptuous, whether or not the order was legally correct.

2. Whether the attorney's conduct in making the threat, for which the court found it necessary to interrupt the trial in order to administer a reprimand, obstructed the administration of justice within the meaning of 18 U.S.C. 401(1).

3. Whether the court had the power, following the conclusion of the trial in which the threat was made, to adjudicate the attorney in contempt summarily under Rule 42(a), F.R. Crim. P., or whether the matter was required to be heard by a different judge, pursuant to the notice and hearing provisions of Rule 42(b).

STATUTE AND RULES INVOLVED

Section 401 of Title 18 of the United States Code provides in pertinent part:

> § 401. *Power of court.*
>
> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

* * * * *

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Rule 42 of the Federal Rules of Criminal Procedure provides:

Rule 42. Criminal Contempt

(a) *Summary Disposition.*

A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) *Disposition Upon Notice and Hearing.*

A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the

> contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

Rule 43(c) of the Federal Rules of Civil Procedure provides in pertinent part:

> Rule 43.—Evidence
>
> * * * * *
>
> (c) *Record of excluded evidence.*
>
> In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. * * *

STATEMENT

On June 30, 1960, petitioner, pursuant to 18 U.S.C. 401 and Rule 42(a), F. R. Crim. P., was summarily adjudicated guilty of three specifications of criminal contempt (Specifications 5, 6, and 7), certified to have been committed by him as one of the attorneys for the plaintiff during the trial of a civil action in the United States District Court for the Northern District of Illinois (*Parmelee Transportation Company* v. *John L. Keeshin, et al.*),[2] and was sentenced to ten

[2] Specifications 1-4 (5 R. 8-9) did not relate to petitioner and are not involved. They pertained to Lee Freeman, co-counsel

days' confinement on each specification, the sentences to run concurrently (5 R. 6–7, 10–11). On appeal, the convictions on Specifications 5 and 7 were reversed (5 R. 59–60, 64–65), and are no longer involved.[3] The conviction on Specification 6 was affirmed (5 R. 60–64), but the sentence was reduced to a fine of $100 (5 R. 64). Circuit Judge Duffy, dissenting in part, thought that the convictions on all three specifications should have been reversed (5 R. 69–70).

Specification 6 reads (5 R. 10–11):

> On April 27, 1960, in the presence and hearing of the jury, after the Court had instructed

for the plaintiff at the *Parmelee* trial. The judgments as to all four were reversed by the court of appeals in *Parmelee Transportation Co.* v. *Keeshin (In the matter of Freeman)*, 292 F. 2d 806 (C.A. 7).

The merits of the civil action are the subject of *Parmelee Transportation Co.* v. *Keeshin*, 292 F. 2d 794 (C.A. 7), certiorari denied, 368 U.S. 944 (No. 431, this Term). See also 186 F. Supp. 533 (district court opinion).

[3] Specification 5 charged petitioner with contempt in saying on the opening day of the trial, prior to the selection of a jury, "This should be a forum where we could have that lawsuit tried without being hemmed in and penned in with a lot of artificial restrictions, dreamed up by counsel on the other side, whereby we are not given an opportunity to tell this jury what this lawsuit is about" (5 R. 10; see 1 R. 112, 132). The court of appeals, for reasons set forth in its opinion, held that this specification did "not validly charge [petitioner] with contempt of court" (5 R. 59–60).

Specification 7 charged that "Repeatedly during the course of the trial * * * [petitioner] conducted himself in a contumacious manner by employing a tone of voice and an attitude indicating contempt and defiance of the Court and disregarding admonitions of the Court with respect to his conduct before the jury" (5 R. 11). The court of appeals held that this specification did not constitute contempt as a matter of law because it recited "mere conclusions and no facts" (5 R. 64–65).

the attorneys for plaintiff to refrain from repeatedly asking questions on subjects which the Court had ruled was [*sic*] not admissible, in the presence of the jury as distinguished from an offer of proof outside the presence of the jury (Trans. 578, 580), the following occurred:

"By Mr. McConnell: Now you are trying to tell us we can't ask these questions. We have a right to ask these questions, and until we are stopped from asking these questions we are going to ask them, because it is in our prerogative in doing it.

"By the Court: I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.

"By Mr. McConnell: We have a right to ask them.

"By the Court: You can offer proof on it.

"By Mr. McConnell: We have a right to ask questions which we offer on this issue, and Your Honor can sustain their objection to them. We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us." (Trans. 581)[4]

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[4] It is evident from the court of appeals' treatment of Specification 6 (see 5 R. 60–64) that the court considered that it was upholding the specification in part only. The court appears to have treated the specification as though all the language of petitioner quoted in it had been certified by the trial court as contumacious. Thus, the court of appeals said, "As to specification 6, we hold that, with the exception of one statement attributed to respondent, nothing with which he is charged has been supported by proof of contumaciousness or disrespect" (5 R. 63). It then proceeded to discuss, and to

The circumstances leading to the incident involved in Specification 6, and other facts pertinent to the validity of the conviction thereunder, may be summarized as follows:

1. *The private antitrust suit.*—The civil action out of which the contempt matter arose was a suit for treble damages and injunctive relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C. 15, 26 (1 R. 4–22). The plaintiff, Parmelee Transportation Company, had for many years prior to October 1, 1955, been engaged in the business of transporting passengers and baggage between railroad stations in Chicago as the exclusive agent of the railroads having terminals in that city. The complaint (1 R. 4–22) charged the defendants—John L. Keeshin, Railroad Transfer

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sustain the judgment as to, "[t]he exception," *viz.*, the final remarks of petitioner in the quoted excerpt: "We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us" (5 R. 63–64). The latter language, the court held, constituted "inexcusable contumacious conduct" and was "enough to support" the specification (5 R. 64).

We do not believe, however, that the trial court intended to suggest that all the remarks of petitioner quoted in the specification were contemptuous. We think that the trial judge, like the court of appeals, considered only the final remarks of petitioner contumacious, but that he quoted the immediately preceding colloquy in order to place the remarks deemed contemptuous in their context. This construction is corroborated by the fact that, in a colloquy between petitioner and the court shortly after the incident referred to in Specification 6, the court reprimanded petitioner for using "insult[ing]" language, which it identified by saying, "You certainly do [use insulting language] when you say you will have to be dragged out by a sheriff in stopping you from making the proof" (2 R. 734–735; see *infra*, pp. 17–18)—alluding to petitioner's threat of a few moments earlier to continue asking questions "unless some bailiff

Service Inc.,[5] Hugh W. Cross,[6] six railroads,[7] and the presidents of four of these six railroads[8]—with having conspired, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1, 2, to bring about the discontinuance by the railroads of the services of Parmelee and the substitution for Parmelee, under a like arrangement, of Railroad Transfer Service, Inc. The complaint alleged that, before March 1955, Keeshin had promised Cross "valuable consideration" if Cross would persuade the individual railroad presidents to use their influence to cause "Chicago Terminal Lines (the 21 railroads having terminals in Chicago) to eliminate Parmelee from the transfer business in Chicago and to grant the contract instead to a corporation to be formed by Keeshin. This persuasion was to be accomplished by Cross's representing to the railroad presidents that he would exercise his influence on the Interstate Commerce Commission in their favor. During the months that followed, various acts were allegedly performed by the defendants to accomplish

stops us" (2 R. 733). We think, therefore, that the trial court intended to certify as contemptuous only so much of the language of petitioner quoted in Specification 6 as the court of appeals held to be such.

[5] A company organized by Keeshin for the alleged purpose of effectuating the conspiracy charged.

[6] A former member and chairman of the Interstate Commerce Commission.

[7] The Atchison, Topeka and Santa Fe, Baltimore and Ohio, Chicago and North Western, Illinois Central, New York Central, and Pennsylvania Railroads—all of which constituted a committee chosen by 21 railroads ("Chicago Terminal Lines") which comprised all of the railroads having terminals in Chicago.

[8] Howard Simpson (Baltimore and Ohio), Paul Feucht (Chicago and North Western), Wayne Johnston (Illinois Central), and Fred Gurley (Atchison, Topeka and Santa Fe).

this objective, and the plan was brought to fruition in September 1955. At that time, a five-year transfer contract, effective as of October 1, 1955, was granted by Chicago Terminal Lines to Railroad Transfer Service, Inc., allegedly without affording Parmelee an opportunity to compete for the contract and despite the fact that the terms of the new agreement were allegedly less favorable to the railroads than those under which Parmelee had operated and was prepared to offer. (1 R. 5–21, 39–40.) A jury trial was demanded (1 R. 22).

Among the issues joined was whether any public injury had been brought about by the conspiracy charged (1 R. 21, 30, 42, 48, 65, 70, 392). The trial court (Miner, D.J.) ruled before trial that it would "separate" the issues, *i.e.*, that it would limit the issue to be determined by the jury in the first instance to whether any public economic injury had resulted from the railroads' substitution of Railroad Transfer Service, Inc., for Parmelee in the manner alleged in the complaint, and that, only in the event the jury found in the affirmative on that question, would trial be had on the other issues, in particular the issue whether there had been a conspiracy of the kind alleged in the complaint.[2] (1 R. 142; see 1 R. 389–392, 396, 432–436, 439–442, 447–448.) Petitioner and his co-counsel, Lee Freeman, strongly opposed this procedure on behalf of Parmelee; they argued that proof of the conspiracy charged would be sufficient evidence of

[2] The court predicated its ruling on Rule 21 of the Civil Rules of the District Court for the Northern District of Illinois ("Separation of Issues in Civil Suits"), which in turn is based upon Rule 42(b), F.R.C.P. (1 R. 389–390).

public economic injury (1 R. 392–393, 397–415, 443–444, 448). They advised the court that they did not propose to adduce any evidence of public injury except such as would also show the conspiracy, and that if the court proposed to exclude such evidence no purpose would be served in empaneling a jury (1 R. 443–444, 446, 448). They proposed to make an offer of proof of the conspiracy with a view to testing the correctness of their theory of the case in the higher courts (1 R. 443–444, 448). Thus, prior to the empaneling of the jury, the following colloquy occurred (1 R. 443–444):

> By Mr. McConnell: I made an argument before your Honor yesterday in which I stated that I thought any separate proof or any separate trial of an issue of economics or difference of service between Parmelee and the Keeshin company was an irrelevant issue in this case.
>
> I wasn't just making a captious argument. I was making an argument in which I believed, and on which I was prepared to stand.
>
> Now all I want is the right to make a record here. I don't want to waste the time of jurymen or lawyers or your Honor.
>
> By the Court: Make all the record you want.
>
> By Mr. McConnell: Now here is what we propose if it is acceptable to your Honor.
>
> Any offer of proof that we make, we would have to make outside the presence of the jury anyway. I have no intention of offering any proof other than the conspiracy proof under our complaint.

I am not proposing to offer any proof of the differences in services or the economic injury to the public * * * .

* * * * *

* * * Because yesterday you said that you were not going to entertain proof of conspiracy or monopoly.

* * * * *

Now that being so, I just don't want to waste time picking a jury here when I am not going to present any evidence before it.

I would like to make an offer of proof, which I have to make outside the presence of the jury anyway * * * .

* * * * *

* * * So the question is, do we need to technically impanel a jury here? I will follow your Honor's wishes.

By the Court: I will follow the law on the offer of proof out of the presence of the jury.

By Mr. Freeman: Then should we just take the first twelve men and impanel them, under the understanding that we will excuse the jury and make an offer of proof?

By the Court: Yes, you may do that.

By Mr. McConnell: I suppose you would have to then direct the jury on that issue.

By the Court: I don't see any objection to it.

The procedure suggested by petitioner and Freeman was not acceptable to the defense, however, and defense counsel requested that the case "proceed to trial in the normal course" (1 R. 444–450; 2 R. 451–452). The court accordingly ordered that a jury be em-

paneled and that trial proceed in regular course (2 R. 452 *ff.*).

2. *The trial.*—A jury was accordingly empaneled and sworn (2 R. 453–502) and opening statements made (2 R. 503–545), after which the following occurred (2 R. 545–546):

> By THE COURT: I am anticipating an offer of proof. Am I correct in my anticipation?
>
> * * * * *
>
> By MR. MCCONNELL: I don't know how to do it, your Honor, except to start with it in front of the jury and then your Honor rules, and then we take the jury away and go on from there.
>
> By THE COURT: I have no objection in doing it any way you want. You mean you will start an offer of proof?
>
> By MR. MCCONNELL: Yes. The Rule [43(c), F.R. Civ. P., *supra*, p. 42] says I have to put the witness on the stand, have him sworn in the presence of the jury and then start examining him.
>
> By THE COURT: All right; bring out the jury and put your witness on the stand.

The plaintiff proceeded to present its case through two principal kinds of evidence—testimony by witnesses in court and depositions taken in pre-trial discovery proceedings (2 R. 546 *ff.*, 612 *ff.*, 637 *ff.*, 640 *ff.*, 655 *ff.*, 667 *ff.*, 690 *ff.*). Virtually all the proffered proof (apart from merely preliminary testimony) related to the conspiracy charge. The court, adhering to its ruling rejecting the plaintiff's contention that evidence on the conspiracy issue was relevant to the issue of public economic injury (see, *e.g.*, 2 R.

583–584, 586, 588), sustained all defense objections to questions relating to the alleged conspiracy (see, *e.g.*, 2 R. 577, 613–614, 619–621, 624, 637–640, 641, 700, 709–710, 711–712, 714, 719–722, 725–729). The court, on the other hand, was equally insistent with defense counsel that the plaintiff be given complete freedom to make offers of proof on the conspiracy issue for consideration by the court of appeals, should the latter court disagree with the trial court's ruling excluding evidence on that subject (*e.g.*, 2 R. 586–589).

The pattern of procedure which developed was therefore as follows: Whenever a question pertinent to the alleged conspiracy was asked of a witness (or a question in a deposition which bore on that issue was read), an objection would be made, the objection would be sustained, and counsel for the plaintiff would proceed to the next question, the understanding being that offers of proof would be made later in the trial, out of the presence of the jury, as to what the witnesses would have answered (or the deponents had answered) in reply to the questions. Many pages of the transcript were taken up with this procedure (see, *e.g.*, 2 R. 613–614, 619–621, 624, 637–640, 641, 700, 703, 709–710, 711–712, 714, 719–722, 725–729). The consequence was that, although the jury was not being permitted to hear evidence on the issue which the court had ruled was immaterial at that stage of the case, *i.e.*, the conspiracy issue, it was hearing page after page of questions on that issue. The defendants' attorneys, on the one hand, took repeated exception to this procedure and urged the court not to permit plaintiff's counsel to pursue it (2 R. 624–625,

639, 721, 726–727, 729), and, on the other hand, they were insistent that counsel for the plaintiff should not be permitted to make offers of proof pertinent to the alleged conspiracy without there being a witness on the stand (or independently of the reading of a deposition), in accordance with the literal terms of Rule 43(c), F.R.Civ.P. (see, *e.g.*, 2 R. 592, 595, 596–597, 598, 600, 601, 604).

The court apparently took the position that, in view of the defense's objections to the plaintiff's making a general offer of proof, it had no alternative but to permit the above-described procedure in order to allow the plaintiff to "make a record." The court therefore refused to prevent plaintiff's counsel from following the practice (see 2 R. 624, 721, 729). But during the reading by petitioner's co-counsel, Mr. Freeman, of the pre-trial deposition of Howard Simpson, president of the Baltimore and Ohio Railroad (and a defendant), there came a point at which the trial court decided to put an end to the tedious asking of individual questions and to overrule defense counsel's objections to a general offer of proof. The court said (2 R. 731):

> It is becoming obvious that the repetition of question after question about the matter on which the Court has ruled is not competent and proper as distinguished from an offer of proof. It ought not to be hammered and repeated before the jury time and time again, and I would appreciate it very much if you would make your offer of proof on it, and all the conversations, if any—

Mr. Freeman, interrupting, said (2 R. 731–732):

Excuse me. I have only this problem, as Mr. McConnell has well stated it. The statute controlling in this regard is Section — Rule 43(b) of the Federal Rules of Civil Procedure [*sic*[10]]. * * * It requires we do present a witness, and we do go through this deposition or that we do it in person and we ask a question which may be objected to, and it is sustained, and then we offer to prove what the witness would say pursuant to that question.

We are not going through every question and getting an objection. We are trying to shorten it by saying, "Here is a series of questions we will ask," or "Here is a subject matter we will cover."

You will also recall that when we sought to make an offer of proof, for example in the case of Mr. Feucht [11], who later took the stand, Mr. Thompson [a defense attorney] objected as did Mr. Owens and Mr. Meserow and Mr. Keating [other defense attorneys], to the form of the offer. We didn't have a witness there. We were not asking him a question to which there could be an objection. [See 2 R. 596–598, 610–611.]

We find ourselves in an uncomfortable position of both being accused of bad form in making the offer of proof and being accused of bad form when we ask the question. I think we have to try to protect our record by asking the question.

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[10] It is evident from the context that Mr. Freeman intended to refer to Rule 43(c), F.R. Civ. P.

[11] Paul Feucht, former president of the Chicago and North Western Railway Company, and a defendant.

The court, in reply, said (2 R. 732):

> I will not object, and I will permit your form of offer of proof in the absence of the jury by overruling their objections to the form. You have had the witness on the stand, or you have these depositions, and you have identified the witness, and you have asked questions about conversations and about issues not before this jury.
>
> The same ruling prevails on all of the same questions, and if you ask him a million times, it will be the same ruling, and it becomes obvious to the jury and to the Court that you are merely repeating something that the Court has ruled on.

The following colloquy between petitioner and the court then occurred, in the course of which petitioner made the statement certified in Specification 6 and held by the court of appeals to be contemptuous (in supplied italics) (2 R. 732–733):

> By Mr. McConnell: Their objection is right. They have made a sound objection to proceeding without the witness or without the deposition, and we have to make a record, and your rulings are going to be reviewed.
>
> By the Court: All right, but the witness has been on the stand and depositions are being read.
>
> By Mr. McConnell: Now you are trying to tell us we can't ask these questions. We have a right to ask these questions, and until we are stopped from asking these questions we are going to ask them, because it is in our prerogative in doing it.

BY THE COURT: I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.

BY MR. MCCONNELL: We have a right to ask them.

BY THE COURT: You can offer proof on it.

BY MR. MCCONNELL: We have a right to ask questions which we offer on this issue, and your Honor can sustain their objections to them. *We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us.* [Emphasis added.]

BY THE COURT: Well, I will stop you now, and I don't appreciate threats. That is the law and my judgment, and I can only rule upon it as I see it, and I forbid you from asking, repeating the same questions over and over again upon which I have ruled specifically a hundred times that it is not admissible and is improper under this issue.

Following some brief further colloquy between the court and Mr. Freeman (2 R. 733–734), the court, at Mr. Freeman's request, declared a ten-minute recess (2 R. 734). After the jury had departed, the following occurred (2 R. 734–735):

BY THE COURT: Mr. McConnell, we are not playing to the galleries here. I am ruling upon rules of evidence as I see them, and these are not evidence.

MR. MCCONNELL: I am not playing to any galleries.

BY THE COURT: I am not going to have any more of it.

BY MR. MCCONNELL: I am trying to try a lawsuit. I am being prevented from trying it at every stage of it.

BY THE COURT: It doesn't call for insults or abuse.

BY MR. MCCONNELL: I am not making any insults.

BY THE COURT: You certainly do when you say you will have to be dragged out by a sheriff in stopping you from making the proof. I will stop it.

BY MR. MCCONNELL: There comes a time when a lawyer has to stand up and state his client's case.

BY THE COURT: And as a gentleman in the bounds of the law.

BY MR. MCCONNELL: We have a right to ask these questions.

BY THE COURT: You have a right to your say, but I have ruled against it, and you may make your record.

BY MR. MCCONNELL: We can't make the record without asking the questions. That is the point.

BY THE COURT: What do you want to say, Mr. Freeman?

BY MR. FREEMAN: I have nothing further to say.

BY THE COURT: All right, a ten-minute recess.

Following the recess, Mr. Freeman said to the court (2 R. 736):

In view of your Honor's ruling, I will not continue the reading of the deposition of Mr. Simpson, but I will seek to cover it in an offer of proof outside the presence of the jury.

The trial then proceeded without further relevant incident.

The incident involved in Specification 6 occurred on April 27, 1960, the third day of the trial following the empaneling of the jury (2 R. 717). On April 29 (3 R. 940), the court made the following statement in the course of a colloquy (3 R. 958):

> I have had insults. I have had abuse. I am going to deal with it when the proper time comes. * * *

3. *The citation for contempt.*—The trial of the civil action ended on May 10, 1960. On that date, immediately following the jury's verdict,[12] the court said (4 R. 1717):

> I am now going to hold Mr. McConnell and Mr. Freeman in contempt of court, and I will make it returnable two weeks from today—direct contempt.

Upon petitioner's advising the court that he had transportation for Europe the following week (4 R. 1717), the following occurred (4 R 1718):

> By The Court: I will wait until you come back. I am not going to interfere. It is not that urgent, but you cannot do what you did in this case, neither of you. You made direct attacks on the Court unwarrantedly, and the record shows it.
>
> By Mr. Freeman: The record doesn't show that.

[12] The jury answered "No" to the interrogatory, "Has the selection of Railroad Transfer Service, Inc., rather than Parmelee Transportation Company to perform the interstation transfer service for the railroads terminating in Chicago resulted in injury to the public?" (4 R. 1717).

BY MR. MCCONNELL: I would ask that it go over until I get back.

BY THE COURT: Yes; I am going to let it go over, and I am going to put it over to the same time I sign the Decree I have asked for [*i.e.*, in the principal case]. There is no emergency about it, but I am going to make the record.

* * * * *

BY MR. MESEROW [a defense attorney]: Is your Honor setting a date for the signing of the Decree?

BY THE COURT: When do you come back?

BY MR. MCCONNELL: The 28th of June.

BY THE COURT: All right; make it on the 30th of June.

BY MR. MCCONNELL: Yes, your Honor.

BY THE COURT: That will be the order.

On the same day, a formal order was accordingly entered holding petitioner and Freeman in direct contempt of court and postponing the imposition of sentence until June 30, 1960 (4 R. 1726; see 4 R. 1727).

4. *The judgment and sentence for contempt.*—On June 30, 1960, the court, as previously noted, issued a "Contempt Order and Certificate" (5 R. 6–11) summarily adjudicating petitioner and Freeman guilty of seven specifications of criminal contempt (three as to petitioner and four as to Freeman). In conformity with Rule 42(a), F.R. Crim. P. (*supra*, p. 3), the order certified that the contempts specified had been committed in the actual presence of, and had been seen and heard by, the court during the trial of the treble damages action (5 R. 6–7). In a pre-

fatory passage preceding the specifications, the order further stated (5 R. 7):

> It is obvious from the record and transcript in this cause, and more especially cited herein, that the defendants Lee A. Freeman and Thomas C. McConnell, both attorneys for the plaintiff herein, embarked upon a course of unprofessional, unethical, intimidating, insulting, defiant, unfair and improper behavior, to foist their will upon the Court and jury and to dominate the course of procedure herein without regard to an honest and impartial administration of justice. [13]
>
> I find that the acts, statements, and conduct of each of the defendants hereinafter specified constituted contumacious conduct of so grave a character as to make imposition of fines insufficient punishment.

On the occasion of the signing of the certificate, the following colloquy occurred in open court (4 R. 1721–1723):

> By The Court: * * *
>
> On the question of contempt, I have prepared an order which I am now signing. I will give you each copies.
>
> I am sentencing each of the defendants to ten days in the County Jail, with this proviso: I

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[13] The court of appeals held that this part of the certificate was "unimportant" because it was not included in a specification (5 R. 68): "Inasmuch as the court's order must stand or fall on the specifications, the language in the preface is unimportant, unless it supports [petitioner's] contention that it showed the prejudice of the trial judge and that he was 'incapable of giving him any kind of a fair hearing on the issue of contempt'. We cannot give it such [illegible]."

have no ill feeling in the matter. The court was seriously hurt in this matter on the procedure. The specifications are in here, and I will read them if you want me to.

I will enter my own motion for suspension of it, if you folks will decide to enter or file a petition of retraction and apology.

I have no malice in my heart. I cannot permit this to go unchallenged with all the seriousness at my command. I don't want the punishment to be unduly, but the court is entitled to that much consideration, and you must determine between now—I will give you plenty of time. I will continue it until court's reopening, unless you have other plans. I have no objection to between now and September, say the 15th or latter part of September, you can decide if you want to.

By Mr. Thomas C. McConnell: That is perfectly all right.

By The Court: If you want to file the petition or take an appeal.

By Mr. McConnell: So there is no final order entered this morning?

* * * * *

By Mr. McConnell: I say my only question about it is whether it is a final order entered today.

By The Court: I am entering a final order today with a motion to vacate. It is the court's order. If you want to make your own motion, I will be glad to entertain that, but I am doing that and I am giving you a lot of consideration.

I don't want to—the court has got to protect itself against the charges, the specifications that I have in there. * * * All in all, I would rather

have the apology than I would the sentence, much rather.

5. *The motion to vacate the judgment of contempt.*—On July 7, 1960, petitioner filed a motion to arrest and vacate the judgment of contempt and for "trial before an impartial judge" (5 R. 11–19). He contended that the court had "lost jurisdiction to deal with the alleged contempt summarily since the alleged contempt occurred several months prior to the entry of the contempt order and certificate and on at least two occasions the trial judge stated that there was no emergency about the contempt matter" (5 R. 11) and that he "was entitled to have the issues asserted by said judge as contempt of court tried before an impartial judge pursuant to Rule 42(b) of the Federal Rules of Criminal Procedure [*supra*, pp. 3–4]" (5 R. 12). He denied the assertion in the certificate that he had been guilty of "unethical and unprofessional conduct," and stated that he could not accept "the option of apologizing for something of which [he was] not guilty or of going to jail" (5 R. 18).

On the same day, in open court, petitioner stated to Judge Miner that neither he nor Mr. Freeman had intended to attack the integrity of the court, that any "mistakes" they had made "were not mistakes that were intended for the purpose of attacking your Honor" (5 R. 35–36). The following then occurred (5 R. 36–37):

> THE COURT: I have said to you at the outset that I have no ill-feeling. It was the matter of the integrity of the Court that I wanted to pro-

tect. Believe me, there is nothing personal in it.

MR. THOMAS McCONNELL: There was no attack made on this Court and never has been.

THE COURT: From the words that you have used and the statements that are shown in the record, there isn't any question but that you have exceeded every reasonable limitation in the trial of the case, but I still, certainly, have no malice in my heart, I never did in my life. I have been on the bench twenty-three years and I have never done this before.

There is one thing one must do—protect the record. Over the objections of the defense counsel, I think all the way down the line I have let you make your record completely. There is not a scintilla of evidence, not a statement that will indicate you have been curtailed in any way in the making of your offer of proof. Isn't that right?

MR. THOMAS McCONNELL: Well, we have made our offers of proof.

THE COURT: Completely.

MR. THOMAS McCONNELL: We felt then and we do feel now that in the heat of the trial we had to take certain steps to protect our rights. That's all we are trying to do.

* * * * *

THE COURT: I will enter your motion to vacate.

* * * * *

I would much prefer when you file your petition, that you state a retraction and apology. I will help you in every way I can, believe me. I don't want any hardship upon either of you. It is with great reluctance that I have done

> what I have done. I do not penalize lawyers unduly. I don't want to punish them unnecessarily and harshly. It has never been my practise and it will not be in this case, but I think the most insulting remarks, the most abusive words are on the record and I pointed them out to you.

The matter was then continued to September 15, 1960 (5 R. 38).

On September 15, 1960, petitioner advised the court that he declined to make the "retraction and apology" upon which the court had conditioned its willingness to vacate the contempt judgment, and the motion to vacate was overruled (5 R. 39–40).

6. *The appeal.*[14]—In sustaining the contempt judgment as to Specification 6, the majority of the court of appeals said in part (5 R. 63–64):

> The whole theory for holding respondent immune from his conduct in representing his client in good faith is satisfied when he is permitted to make a record in a respectful manner in the trial court for use in a court of review. The theory rests on the premise that he needs no further protection than an adequate record and that, if the court infringes his right to make such a record, his redress is in the court of review. His language which we now quote [15] indicates that he did not rely alone

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[14] At the request of Judge Miner the United States Attorney appeared in the court of appeals in support of the contempt conviction.

[15] *I.e.*, the words "We don't have a right to read the answers, but we have a right to ask the questions, and we propose to do so unless some bailiff stops us" (see 5 R. 63, and *supra*, pp. 6, 17).

> upon this protection but that he took the position that he intended to physically defy the court to the point that only a superior physical force called upon by the court could prevent him from proceeding. Even if he was right in his method of making a record and the court was wrong, this threat was inexcusable contumacious conduct. While events did not precipitate a physical clash, respondent made it clear when he uttered these words that he proposed to insist upon pursuing his course of action until stopped by a court bailiff. This proof is enough to support specification 6 and to that extent will require an affirmance of the order from which this appeal has been taken. * * *

In holding that Judge Miner was not required to disqualify himself from acting in the contempt matter, the majority, after referring to *Sacher* v. *United States*, 343 U.S. 1, and *Offutt* v. *United States*, 348 U.S. 11, said (5 R. 67):

> In the present appeal, * * * we do not find that [the judge] was personally involved in controversy with the respondent or that in his rulings leading to the orders appealed from he was actuated by personal enmity toward either of the lawyers held in contempt. Accordingly, we do not feel that the *Offutt* case requires that upon the record before us there should be a remandment for retrial before another judge. * * * [T]he records before us affirmatively rebut any personal enmity harbored by the judge against the two respondents before him.
>
> We, therefore, hold that the district court did not err in failing to refer the questions of

> contempt to the executive committee for assignment for hearing by another judge.

Judge Duffy, dissenting in part, agreed with the majority that Judge Miner did not err in failing to request the assignment of another judge to hear the charges of contempt (5 R. 69). He thought, however, that reversal was required as to Specification 6 as well as to Specifications 5 and 7 (5 R. 69–70). On the latter point he said in part (5 R. 70):

> Mr. McConnell has had much trial experience. Even under the stress of the exasperating conditions such as he encountered, he should never have threatened to continue asking the questions in view of the Court's rulings, although he felt certain the rulings were incorrect. After the recess, when he had had time to cool down and consider the language used, he should have apologized to the Court.
>
> Nevertheless, Mr. McConnell did comply with the Court's order. At that point there was no interference with the conduct of the trial. There was no obstruction in the administration of justice. * * *

SUMMARY OF ARGUMENT

I

A. Petitioner's contention that his conduct cannot be deemed contemptuous because the order of Judge Miner which he threatened to disobey was not a "lawful" order is based on a misconception of the meaning of "lawful" as used in 18 U.S.C. 401(3). An order of a court is a "lawful" order within the statutory intendment if the court has the authority to make it, whether it be correct or erroneous.

B. Petitioner's defiance of the authority of the court obstructed the administration of justice within the meaning of the contempt statute. The requirement that an act of misbehavior in the presence of the court, to be punishable as contemptuous, must be obstructive of the administration of justice does not mean that the misconduct must be accompanied by, or result in, some physical interruption of the trial or other proceeding. That insolent, insulting, defiant, or otherwise disrespectful language to a judge in open court constitutes punishable contempt, without further proof of the obstructive consequences of such conduct, has never been questioned. Where a court's authority is thus openly and publicly defied, the offensive language is deemed inherently to obstruct the judicial process, since the utterance tends by its very nature to bring about the demoralization of the court's authority before the public. It is the purpose of the power of summary contempt to prevent consequences of that sort.

Moreover, the record in the present case shows that the remarks of petitioner for which he was cited did interrupt the trial. The duration of the interruption cannot be a relevant circumstance. The dissenting judge's view that there was no obstruction in the administration of justice because petitioner eventually complied with the court's order fails to take account of this interruption, and overlooks the fact that the defiance which petitioner exhibited was in itself obstructive of the processes of justice, in the proper sense of that requirement of the contempt statute.

II

A. Ever since *Sacher* v. *United States*, 343 U.S. 1, it has been settled that a trial judge in whose presence a contempt occurs may, without extinguishing his power under Rule 42(a), defer the summary adjudication of contempt until the completion of the trial if in his judgment the exigencies of the trial require that he do so. An attorney who is adjudicated in contempt in the midst of a trial, even though sentence be suspended, is unlikely to be able to give his client's cause the undivided attention which the client has a right to expect—particularly where, as will often happen, the attorney chooses to appeal from the contempt order and starts promptly to plan his strategy for procuring its reversal. Deferral of summary action until after the conclusion of the trial has the further advantage, as noted in *Sacher* (343 U.S. at 11), of guarding against the possibility that "what should be a well-considered judgment" will be pronounced by the judge "while smarting under the irritation of the contemptuous act."

The procedure approved in *Sacher* was essentially followed in the present case. The court's further postponement of the specifications of contempt and of the sentencing to a time six weeks following the termination of the trial, in order to accommodate petitioner by allowing him to take a pre-arranged trip to Europe, should not now be used as a reason for denying to the court power it would otherwise have had to act summarily under Rule 42(a).

B. The fact that the acts of contempt for which petitioner was cited involved disrespect for the court did not disqualify the presiding judge from acting

summarily; the contempts involved in *Sacher* also involved disrespect for the court. Nor did *Offutt* v. *United States*, 348 U.S. 11, modify the rule of the *Sacher* case. *Offutt* held only that, where the judge has become so personally embroiled with the individual whose conduct is in question that he cannot bring the requisite judicial detachment to the task of vindicating the court's authority, he should request that another judge be assigned to hear the matter. The present case involved no such personal embroilment of Judge Miner with petitioner, and is therefore wholly unlike *Offutt* in this regard. Judge Miner bore himself throughout the trial with exemplary dignity and forbearance. The fact that Judge Miner offered to permit petitioner to purge himself by making an apology and retraction merely emphasizes the complete lack of vindictiveness with which he undertook to uphold the authority of the court.

If the fact that the language charged as contemptuous involved disrespect for the court sufficed without more to disqualify the court from dealing with the matter summarily, one of the principal purposes of the power of summary contempt would be defeated. The proper maintenance of the dignity and authority of the court requires in all ordinary cases that the same judge against whom the disrespect is directed pronounce the judgment of contempt and impose the penalty. Respect for the authority of the court would not be enhanced if the general rule were that manifestations of disrespect could be punished only by the presiding judge's assuming the role of complaining witness before another judge in a proceeding

under Rule 42(b). Many judges, rather than resort to any such procedure, would doubtless, in all but the most aggravated cases, let the matter pass without initiating appropriate vindicatory action—to the detriment of the orderly conduct of trials and the judicial process. The alternative to such a procedure is that sanctioned in the *Sacher* case and followed here.

ARGUMENT

I

PETITIONER'S THREAT TO CONTINUE A COURSE OF ACTION, FROM WHICH HE AND HIS CO-COUNSEL HAD BEEN CATEGORICALLY ORDERED TO DESIST, "UNLESS SOME BAILIFF STOPS US," WAS CONTEMPTUOUS

A. WHETHER THE ORDER WHICH PETITIONER DEFIED WAS RIGHT OR WRONG IS IMMATERIAL

Immediately preceding the statement by petitioner which was upheld as contemptuous by the court of appeals, the trial court said to petitioner (2 R. 733; see the Statement, *supra*, pp. 6, 17):

> I am now stopping you from asking the questions about conversations with Mr. Cross, because I have ruled specifically, definitely and completely that it is not an issue in this case.

In the face of this categorical command, there was but one course open to petitioner—compliance. Petitioner's rejoinder that he and his co-counsel had "a right to ask the questions, and we propose to do so unless some bailiff stops us" (*ibid.*) was in defiance of the authority of the court, disruptive of orderly procedure, and contemptuous as a matter of law. As

stated by the majority below (5 R. 64), petitioner, by this language—

> took the position that he intended to physically defy the court to the point that only a superior physical force called upon by the court could prevent him from proceeding. Even if he was right in his method of making a record and the court was wrong, this threat was inexcusable contumacious conduct.[16]

1. Petitioner's contention (Br. 21–30) that his conduct cannot be deemed contemptuous because the order of Judge Miner which he threatened to disobey was not a "lawful" order is founded on a misconception of the meaning of "lawful" as used in 18 U.S.C. 401(3) (*supra*, pp. 2–3). Petitioner argues that under Rule 43(c), F.R. Civ. P. (*supra*, p. 4), the only "lawful" way in which he and his co-counsel could make their offers of proof on behalf of their client was first to lay a foundation by asking questions of witnesses relating to the alleged conspiracy in the presence of the jury (or reading questions on that subject which had been put to deponents in the pre-trial discovery proceedings). When Judge Miner, overruling the objections of all parties, decided to put a stop to this procedure and to require plaintiff's

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[16] The court of appeals was unanimous that petitioner's language was offensive. Judge Duffy agreed with the majority (5 R. 70; see the Statement, *supra*, p. 27) that petitioner "should never have threatened to continue asking the questions in view of the Court's rulings," and was of the view that, having done so, he owed an apology to the trial judge. We discuss *infra*, pp. 40–41, Judge Duffy's position that, notwithstanding petitioner's contumacy, no contempt was committed because he ultimately "did comply with the Court's order."

counsel to make their offers of proof without any further reading of questions from the Simpson deposition on the subject of conspiracy, he acted "unlawfully," petitioner argues—with the consequence that there was no obligation on the part of petitioner and Mr. Freeman to comply with his command, and therefore no contempt on petitioner's part when he told the court he proposed to ignore the command unless physically restrained by a bailiff (Br. 25).[17]

Although petitioner's construction of Rule 43(c) as applied to offers of proof of the type here involved is questionable,[18] there is no need to pursue the merits of that issue for present purposes. Whatever may be the proper mode of making an offer of proof under the peculiar circumstances of the trial out of which the present case arose, the fact is that the trial court, after extensive discussion of the problem in colloquies

[17] There can be no dispute that petitioner "was entitled to proceed at least far enough for the record to show he was unequivocally stopped by the court" (Br. 21). But petitioner was "unequivocally stopped" before his contemptuous statement (2 R. 733; see the Statement, *supra*, pp. 16-17). For this reason his characterization of the language held contemptuous as merely "picturesque language" used to obtain "record evidence" of such an unequivocal direction (Br. 21) does not comport with the record. All three judges below recognized that petitioner went beyond getting "record evidence" of a clear command from the court and that he in fact defied the court by threatening to ignore its order unless prevented by force (5 R. 63–64, 70; see the Statement, *supra*, pp. 25–26, 27).

[18] We suggest that Rule 43(c) was designed to apply to the ordinary "offer of proof" with respect to which an occasional question propounded to a witness is held by the trial court to be beyond the scope of the issues; it was not meant to apply to an extraordinary situation, such as that involved here, where the entire proof offered by a party relates to a subject which has been ruled to be irrelevant.

with counsel, finally resolved the issue and unequivocally commanded plaintiff's counsel to discontinue the course of procedure they had been pursuing. At that point, it became the duty of counsel to comply with the court's directive, whether in their view it was right or wrong. "Lawful," as used in 18 U.S.C. 401(3), manifestly does not mean "correct," or "free from error," as petitioner would have it. An order of a court is a "lawful" order within the statutory intendment if the court has the authority and jurisdiction to make it. If the order be erroneous, it would be subject to correction on appeal, but, while it is outstanding, disobedience would be punishable as contempt.[19]

2. There is no substance to petitioner's present suggestion that "his client's right to make a record on appeal was destroyed" by the trial court's order (Br. 29). Petitioner himself initially suggested that the empaneling of a jury be omitted and that the plaintiff's offers of proof be made in general terms, without jury or witnesses (see the Statement, *supra*, pp. 10–11). Basically, what the trial court finally ordered as a solution to the problem with which it was confronted was a modification of petitioner's original proposal. Even petitioner acknowledged during the contempt proceedings that his client's right to make offers of proof had been fully preserved at the trial (5 R. 36; see the Statement, *supra*, p. 24; see also

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[19] See *United States* v. *United Mine Workers*, 330 U.S. 258, 293–294; *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 450; *Worden* v. *Searls*, 121 U.S. 14; cf. *Howat* v. *Kansas*, 258 U.S. 181, 189–190. See also *United States* v. *Shipp*, 203 U.S. 563, 573.

3 R. 1035).[20] Moreover, even if the client's right to make a record had been frustrated, "his redress," as observed by the court of appeals, "[was] in the court of review" (5 R. 63).

B. PETITIONER'S DEFIANCE OF THE AUTHORITY OF THE COURT OBSTRUCTED THE ADMINISTRATION OF JUSTICE WITHIN THE MEANING OF THE CONTEMPT STATUTE

Section 401(1) of Title 18 (*supra*, pp. 2–3) defines the misbehavior which constitutes punishable contempt as "[m]isbehavior of any person in its [the court's] presence or so near thereto as to obstruct the administration of justice." Petitioner contends (Br. 30–32) that the misconduct certified in Specification 6 did not meet this description because it did not obstruct the administration of justice. There is no merit to the argument.[21]

1. The requirement that an act of misbehavior in the presence of the court, to be punishable as contemptuous, must obstruct the administration of justice does not mean, as petitioner and the dissenting judge be-

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[20] Petitioner's assertion (Br. 29–30) that omissions in his offers of proof, cited by the trial court and court of appeals as justifying the dismissal of the *Parmelee* suit, "were occasioned by the trial court's refusal to permit petitioner to make proper offers of proof within the rule [*i.e.*, Rule 43(c), F.R. Civ. P.]" is without record support. Petitioner was given complete freedom to make any offer of proof he desired.

[21] Notwithstanding the phraseology of the subsection, which would suggest that the obstruction of justice requirement applies only to acts of misconduct committed near the court (as distinguished from such acts committed in the presence of the court), we shall assume, *arguendo*, that the qualification is equally applicable to both types of misbehavior. Cf. *Ex parte Hudgings*, 249 U.S. 378, 383; *In re Michael*, 326 U.S. 224, 228.

low (5 R. 70) apparently assume,[22] that the misbehavior must be accompanied by, or result in, some overt physical interruption of the trial or other proceeding. The kind of contemptuous behavior which has resulted in such a palpable obstruction of the processes of justice—as, for example, a physical assault on the person of the judge or the striking of a court attendant (cf. *Ex parte Terry*, 128 U.S. 289)—has been the exception rather than the rule in the adjudicated cases in this area of the law. More common than such physical ways of demoralizing the authority of the court have been the subtler acts or utterances whereby that authority has been exposed to the danger of scorn or obloquy—the slighting remark, the contemptuous gesture, the defiant rejoinder, the insolent retort. Particularly where, as here, a jury is sitting, able to observe the manner in which the dignity and authority of the court are treated with disdain, it is the less overt manifestations of disrespect, more often than the grosser forms of contumacious conduct, which

[22] Petitioner argues (Br. 32) that the majority below, as well as the dissenting judge, concluded that the conduct certified as contemptuous in Specification 6 failed to obstruct the administration of justice within the meaning of 18 U.S.C. 401(1). The court's opinion cannot be read as supporting such an interpretation. The majority sustained petitioner's conviction on Specification 6 only after it had referred to the requirement that there be an interference with the administration of justice for purposes of punishing misbehavior in the presence of the court as contempt (5 R. 62–63). The majority must have concluded, consequently, that at least the portion of petitioner's remarks, quoted in Specification 6, which it upheld as constituting a contempt (see note 4, *supra*, pp. 6–8) did obstruct the administration of justice. On no other hypothesis can its decision be reconciled with the pertinent passages of its opinion.

present the greater danger that the majesty of the law, identified in the jurors' minds with the person of the presiding judge, will be degraded, and the administration of justice obstructed, in ways which might not be readily apparent. If the jurors perceive that the authority of the judge is held in contempt by the parties or their attorneys, the processes of justice are obstructed in a manner which, if less patent, is no less real than where a trial is brought to an actual temporary halt by obstreperous behavior.

For these reasons, the law has never required that an action or utterance, to be summarily punishable, must be accompanied by some palpable physical obstruction of the pending proceeding. That insolent, insulting, defiant, or otherwise disrespectful language to a judge in open court in the course of a trial constitutes punishable contempt, without further proof of the obstructive consequences of such conduct, has to our knowledge never been questioned.[2] Thus, in *Ex parte Terry*, 128 U.S. 289, 308, the giving of "opprobrious language to the judge" was cited as a typical "contempt in the face of the court" (quoting Bacon's Abridgment, "Courts," E). The same case

[2] See *Offutt* v. *United States*, 348 U.S. 11; *Sacher* v. *United States*, 343 U.S. 1; *Fisher* v. *Pace*, 336 U.S. 155; *Cooke* v. *United States*, 267 U.S. 517, 534; *Ex parte Terry*, 128 U.S. 289, 307-308, 309; *MacInnes* v. *United States*, 191 F. 2d 157, 160 (C.A. 9), certiorari denied, 342 U.S. 955; *In re Crow*, 165 Minn. 293, 296 N.W. 102 (1925); *Ex parte Wright*, 65 Ind. 504, 508 (1879); *Mahaney* v. *State*, 33 Ind. App. 655, 658, 72 N.E. 151, 152-153 (1904); *State* v. *Conn*, 7 N.D. 299, 74 N.W. 992 (1898); *In re Cooper*, 32 Vt. 258, 263-264 (1859); *In re Wills*, 91 Wash. 180, 162 Pac. 38 (1917); *Alberti* v. *Commonwealth*, 315 Mass. 531, 535, 53 N.E. 2d 690, 692 (1944); *White* v. *Gaines*, 195 Ga. 46, 21 S.E. 2d 787 (1943).

referred with approval to a statement from *Ex parte Wright*, 65 Ind. 504, 508, that "direct contempt" includes "an open insult, in the face of the court to the persons of the judges while presiding" (128 U.S. at 309). And in *Cooke* v. *United States*, 267 U.S. 517, 534, this Court noted that, "To preserve order in the court room for the proper conduct of business," the court must have the power to punish as contemptuous any "disturbance or violence or physical obstruction *or disrespect to the court* when occurring in open court" (emphasis added). The evident rationale of this fundamental rule is that, where a court's authority is thus openly and publicly defied or held in contempt, the offensive language is deemed inherently obstructive of the judicial process, since the utterance tends by its very nature to bring about that " 'demoralization of the court's authority' before the public" [24] which it is the purpose of the power of summary contempt to prevent. Cf. *Toledo Newspaper Co.* v. *United States*, 247 U.S. 402, 419.

Nothing in *Ex parte Hudgings*, 249 U.S. 378, or in *In re Michael*, 326 U.S. 224, is inconsistent with these views. In *Hudgings*, this Court said (249 U.S. at 383):

> An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in

[24] *In re Oliver*, 333 U.S. 257, 275 (quoting *Cooke* v. *United States*, 267 U.S. 517, 536).

> every case where the power to punish for contempt is exerted * * *.

In *In re Michael* this language was referred to with approval (326 U.S. at 228). But those cases hold no more than that perjury, in and of itself, is not contempt. It is in the light of that holding that the above-quoted language of *Ex parte Hudgings* must be understood. There is nothing, we submit, in either case which would support the view that where openly insulting or otherwise contemptuous language is addressed to a court further proof of its obstructiveness is required to make it summarily punishable as contempt.

2. In any event, the record in this case affirmatively shows that the contumacious language did result in a palpable obstruction or interruption of a pending proceeding. Following the defiant remark for which petitioner was later cited, the trial judge found it necessary to interrupt the trial to administer a reprimand to him (2 R. 733). A moment later, petitioner's associate requested a ten-minute recess. Following the dismissal of the jury, the judge administered a more extensive rebuke—in the colloquy in which petitioner was admonished that he was "not playing to the galleries" (2 R. 734–735). (See the Statement, *supra*, pp. 17–18.) "An obstruction to the performance of judicial duty resulting from an act done in the presence of the court" (*Ex parte Hudgings, supra*, 249 U.S. at 383) thus did in fact occur. Were the duration of the interruption or obstruction a relevant circumstance, even an aggravated act of contumacy could not be punished as contemptuous if the of-

fender were promptly removed from the courtroom and the proceedings resumed. In the report of *Ex parte Terry*, 128 U.S. 289, for example, there is nothing which suggests that the assault on the marshal in open court, there held summarily punishable as a contempt, interrupted the proceedings in progress more than momentarily. On the contrary, the report of the case in the lower court indicates that the interruption was in fact of very brief duration.[23] In any event, neither this Court nor the lower court considered the period of time consumed by the obstructive disturbance to be a relevant factor.

Judge Duffy, in his dissenting opinion below, points out that, following the recess which was declared shortly after the remark of petitioner for which he was cited in Specification 6, "Mr. McConnell did comply with the Court's order." Because of the compliance, Judge Duffy concluded that "[*a*]*t that point* that was no interference with the conduct of the trial" (emphasis added), and hence "no obstruction in the administration of justice" (5 R. 70; see the Statement, *supra*, p. 27). But if petitioner's threat to ignore Judge Miner's order was contemptuous when it occurred, as the majority correctly held, it did not cease to be so because co-counsel obtained a recess and petitioner later thought better of the matter and decided not to carry out his stated intent. The fact, in short, that "events did not precipitate a physical

[23] The assault occurred during the reading of an opinion by Mr. Justice Field, and "[a]s soon as the disturbance had ceased, Justice Field proceeded with the reading of the opinion * * *" (*In re Terry*, 36 Fed. 419, 420 (C.C. D. Cal.)).

clash" (5 R. 64) did not change the character of the completed act of contempt. More importantly, Judge Duffy's analysis wholly overlooks the fact that the defiance which petitioner exhibited in making the threat was itself obstructive of the processes of justice in the true sense of the statute (see *supra*, pp. 36–38).

II

JUDGE MINER PROPERLY ACTED SUMMARILY UNDER RULE 42(a) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Petitioner contends (Br. 32–37) that Judge Miner erred in summarily adjudicating him in contempt under Rule 42(a), F.R. Crim. P. (*supra*, p. 3), rather than ordering a hearing on the contempt charges under Rule 42(b) (*supra*, pp. 3–4) before a different judge. This contention was rejected by all three judges of the court of appeals (5 R. 65–67, 69) and is without merit.

A. A TRIAL JUDGE MAY DEFER THE SUMMARY ADJUDICATION OF CONTEMPT UNTIL THE COMPLETION OF THE TRIAL

Since *Sacher* v. *United States*, 343 U.S. 1, it has been settled law that a trial judge in whose presence a contempt occurs may, without extinguishing his power under Rule 42(a), defer the summary adjudication of contempt until the completion of the trial if in his judgment the exigencies of the trial require it. Accord, *In re Carey*, 165 Minn. 203, 204–205, 206 N.W. 402 (1925).[28] "The overriding consideration," as this

[28] See *Offutt* v. *United States*, 208 F. 2d 842 (C.A.D.C.), reversed on other grounds, 348 U.S. 11; *In re Murray*, 205 Fed. 626 (C.A. 9); *In re Grossman*, 109 Cal. App. 625, 631–632, 293

Court observed in the *Sacher* case (343 U.S. at 10)—

> is the integrity and efficiency of the trial process, and if the judge deems immediate action inexpedient he should be allowed discretion to follow the procedure taken in this case. To summon a lawyer before the bench and pronounce him guilty of contempt is not unlikely to prejudice his client. * * *

It can make no difference whether the client of the attorney guilty of the offensive conduct is a defendant in a criminal trial, as in the *Sacher* and *Cary* cases, or whether, as here, the client is a party to an important civil action (cf. *In re Maury*, 205 Fed. 626 (C.A. 9)). In either case, the interests of justice require that the client's representation during the trial be as unencumbered by the purely personal concerns of his lawyer as is consistent with the need for prompt penal vindication of the authority of the court. An attorney who is adjudicated in contempt in the midst of a trial, even though sentence be suspended, is unlikely to be able to give his client's cause the undivided attention which the client has a right to expect—particularly where, as will often happen, the attorney chooses to appeal from the contempt order and starts promptly to plan his strategy for winning a reversal in the higher courts.

Deferral of summary action until after the conclusion of the trial has the further advantage, as noted

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Pac. 683, 685-686 (1930). Cf. *Hallinan* v. *United States*, 182 F. 2d 880, 887 (C.A. 9), certiorari denied, 341 U.S. 952; *MacInnes* v. *United States*, 191 F. 2d 157, 160–161 (C.A. 9), certiorari denied, 342 U.S. 953; *Middlebrook* v. *State*, 43 Conn. 257, 269 (1876).

by this Court in *Sacher* (343 U.S. at 11), of guarding against the possibility that "what should be a well-considered judgment" will be pronounced by the judge "while smarting under the irritation of the contemptuous act."[27]

The procedure approved in the *Sacher* and other cases cited *supra*, pp. 41–42, was followed here. At the time of the incident certified in Specification 6, Judge Miner apprised petitioner that he did not "appreciate threats" and that he considerd his conduct "insult[ing]" and "abus[ive]" (2 R. 733, 734–735; see the Statement, *supra*, pp. 17–18). Later in the trial, again indicating his awareness that he had "had insults" and "abuse," he stated that he was "going to deal with it when the proper time comes" (3 R. 958; see the Statement, *supra*, p. 19). At the conclusion of the trial, immediately following the verdict, he notified petitioner

[27] See also Judge Frank's statement to the same effect (*United States* v. *Sacher*, 182 F. 2d 416, 459 (C.A. 2)): "This argument [that the power of summary punishment must be exercised, if at all, immediately upon the occurrence of the contemptuous conduct] puts a premium on hasty action. It means that the judge may act summarily only when he is least likely to be poised and temperate, that only then may he act without a hearing. Why such instant action is fairness or due process—adequately protective of the accused—and postponed action is not, remains unexplained by proponents of this contention. Curiously enough, those who (1) argue that such instant action is an indispensable condition of summary punishment also (2) counsel (and wisely) that the use of the summary power be narrowly circumscribed, for fear that the trial judge, in using it, may do so in haste, spurred to vindictiveness by the anger of the moment. I find it difficult to reconcile those two contentions: The first insists that summary punishment is not valid unless hasty. The second points to the potential danger of haste."

and his co-counsel, Mr. Freeman, that he was "now going to hold [them] * * * in contempt of court, * * * returnable two weeks from today * * *" [for making] direct attacks on the Court unwarrantedly" during the trial (4 R. 1717-1718), and on the same day entered a formal order holding them in contempt (4 R. 1726, 1727). (See the Statement, *supra*, pp. 19-20.) It is true, as petitioner points out, that Judge Miner also said that there was "no emergency about it," following which he "postponed the imposition of sentence for six weeks to June 30, 1960" (Pet. Br. 33; see 4 R. 1718). But what petitioner fails to note, is that the reason for the postponement of further proceedings in the contempt matter for six weeks was to accommodate petitioner by allowing him to take a pre-arranged trip to Europe. Certainly Judge Miner's willingness to adjust his calendar to meet petitioner's convenience should not now be allowed to be used as a reason for denying the judge the power to certify the specifications of contempt and to punish summarily which he would otherwise have had under Rule 42(a). Moreover, although there was "no emergency about" the contempt matter after the trial had been concluded, this fact was no less true of the contempt matters involved in the *Sacher* and other cases cited *supra*, pp. 41-42.*

* The fact that Judge Miner on several occasions during the trial acknowledged that counsel for the plaintiff were acting "in good faith" on behalf of their client (see Pet. Br. 33, 35) is not inconsistent with his summary action adjudicating petitioner in contempt for the defiant language used by petitioner on the occasion certified in Specification 6. The "good faith" of petitioner which the judge referred to was good-faith in arguing that evidence relating to the conspiracy charge of the

B. THE TRIAL JUDGE WAS NOT DISQUALIFIED FROM ACTING SUMMARILY MERELY BECAUSE THE ALLEGED ACTS OF CONTEMPT INVOLVED DISRESPECT FOR THE COURT

1. The fact that the acts of contempt for which petitioner was cited involved disrespect for the court did not, as petitioner argues (Br. 34), disqualify the presiding judge from acting summarily. The contempts in *Sacher* also involved disrespect for the court. Nor did *Offutt* v. *United States*, 348 U.S. 11, modify the rule of the *Sacher* case, as petitioner suggests (Br. 34). Indeed, *Offutt* cites *Sacher* with approval (348 U.S. at 13). *Offutt* held only that, where the judge has become so "personally embroiled" (348 U.S. at 17) with the individual whose conduct is in question that he is unable to approach the task of vindicating the court's authority with proper judicial detachment, he should step aside and request the chief judge of the court to assign another judge to hear the matter. The present case involved no such personal embroilment on the part of Judge Miner, and is therefore wholly unlike *Offutt* in this regard (cf. 348 U.S. at 16–17). In fact, nothing like the strong words which marked many of the utterances of the presid-

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complaint was pertinent to the issue of public economic injury. But the judge's expression of confidence in counsel's good faith on this point was in no way related to petitioner's conduct in threatening to ignore the judge's order referred to in Specification 6. There is no question but that Judge Miner considered that conduct abusive and insulting when it occurred and at all times thereafter.

It should be noted that Judge Miner's statement, "Oh, no, I never dreamed of anything like that—", made in reply to petitioner's statement, "If your Honor tells me I can't do something, I am not going to get in contempt of court just to be funny about it" (2 R. 591) (quoted at Pet. Br. 34–35), was made before the incident involved in Specification 6.

ing judge in the *Sacher* case (see appendix to the opinion of Mr. Justice Frankfurter, 343 U.S. at 42–89) occurred in the present case. Judge Miner demeaned himself throughout the trying days of a vigorously and sometimes bitterly contested lawsuit with exemplary dignity and forbearance. The reluctance with which he felt compelled to issue the contempt citations is reflected by his statements at the time that he had "no ill feeling in the matter" (4 R. 1721) and "no malice in my heart" (4 R. 1722; see 5 R. 36), but that he could not "permit this to go unchallenged" because "[*t*]*he court* was seriously hurt in this matter" and "*the court* has got to protect itself * * *" (emphasis added) (4 R. 1721, 1722, 1723). (See the Statement, *supra*, pp. 21–25.)

Furthermore, the fact that Judge Miner stated that he would vacate the contempt order if petitioner and Mr. Freeman would file a "petition of retraction and apology" (4 R. 1722; see the Statement, *supra*, pp. 22–23, 24–25) does not indicate that, as petitioner argues (Br. 36–37), the judge "regarded the whole contempt proceeding as personal to him" (Br. 36). The willingness of the judge to vacate the order on this condition was consistent with his repeatedly expressed view that it was the impairment of the authority of the office which he occupied which he was seeking to vindicate—not any offense to himself as a person. Nor was it improper, as petitioner suggests (Br. 37), for Judge Miner to offer to vacate the order of contempt if an apology and retraction were made. A trial court has wide latitude with respect to the vacation of its own orders. Judge Miner's willingness to take

such action in this case if an apology and retraction were forthcoming merely emphasizes the complete lack of vindictiveness with which he undertook to vindicate the authority of the court.

For these reasons, the court of appeals was correct in concluding that Judge Miner was not "personally involved in controversy with [petitioner]" and that "the records before us affirmatively rebut any personal enmity harbored by the judge against the two respondents before him" (5 R. 67). By the same token, the court of appeals properly concluded that the rule of the *Offutt* case did not require that there should be "a remandment for retrial before another judge" (5 R. 67). (See the Statement, *supra*, pp. 26–27.)

2. If the fact that the language charged as contemptuous involved disrespect for the court sufficed without more to disqualify the court from dealing with the matter summarily, as petitioner urges, it is evident that one of the principal purposes of the power of summary contempt would be defeated. The proper maintenance of the dignity and authority of the court in the eyes of the jurors, parties, attorneys, and public requires in all ordinary cases that the same judge against whom the disrespect is directed pronounce the judgment of contempt and assess the penalty. Respect for the authority of the court would not be enhanced if the general rule were that manifestations of disrespect could be punished only by the presiding judge's assuming the role of complaining witness before another judge in a proceeding under Rule 42(b). The very cumbersomeness of such a procedure argues weightily against the adoption of

any such general practice. In all ordinary cases, the judge against whom the disrespect was directed would be but one of several, possibly many, witnesses—jurors, parties, court attendants, members of the public—anyone who happened to witness the conduct or hear the utterance charged as offensive. Rather than resort to any such procedure, many a judge would, in all but the most aggravated cases, let the matter pass without initiating appropriate vindicatory action—to the detriment of the orderly conduct of trials and the judicial process.

The alternative to such a procedure is that sanctioned in the *Sacher* case and followed here—permitting the presiding judge himself to exercise the "penal vindication of the dignity of the court" (*Cooke* v. *United States*, 267 U.S. 517, 536), subject to the safeguards afforded by appellate review, and, in those special situations in which the judge has become so emotionally involved as to be unable to act with proper judicial dispassion, subject to the special rule of the *Offutt* case. As this Court observed in *Fisher* v. *Pace*, 336 U.S. 155, 161, a case which also involved disrespect for the presiding judge:

> In a case of this type the transcript of the record cannot convey to us the complete picture of the courtroom scene. It does not depict such elements of misbehavior as expression, manner of speaking, bearing, and attitude of the petitioner. Reliance must be placed upon the fairness and objectivity of the presiding judge. The occurrence must be viewed as a unit in order to appraise properly the misconduct, and the relationship of the petitioner

as an officer of the court must not be lost sight of.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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THOMAS C. McCONNELL,

Petitioner.

REPLY BRIEF FOR PETITIONER.

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I.

PETITIONER DID NOT THREATEN TO DISOBEY ANY LAWFUL ORDER AND SO COULD NOT BE GUILTY OF CONTEMPT.

The issue between petitioner and respondent has become a very narrow one. At page 32 of respondent's brief, it is said that petitioner's contention that his conduct cannot be deemed contemptuous because the order of Judge Miner which he threatened to disobey was not a "lawful order" is founded on a misconception of the meaning of "lawful" as used in 18 U. S. C. 401(3). However, no authority of this Court or any federal court is cited to sustain this contention. In none of the cases cited at the bottom of page 34 of Respondent's brief was the instant statute construed as the government contends. They involve situations where courts were maintaining the status quo while attempting to adjudicate an issue. In none of them had a trial court abrogated a rule of court which as here had the effect of an Act of Congress.

The section of the statute cited is explicit. It says that a court of the United States has power to punish such contempt of its authority, "*and none other*, as— * * * (3) Disobedience or resistance to its *lawful* writ, process, order, rule, decree or command." (Emphasis supplied.)

Everyone concedes that all petitioner ever threatened to do was to proceed in exact compliance with Rule 43(c) of the Federal Rules of Civil Procedure which, as we have pointed out in our original brief, was promulgated by this Court under the authority of the Congress and is binding on the courts as well as the litigants. (See cases cited page 29, Petitioner's original brief.) The Government's position is, and has to be, that the abrogation of this rule by Judge Miner over the objection of counsel opposing petitioner was a lawful order. As we have stated, no decision of any court is cited in support of this contention. The question is obviously one of first impression in this Court although, as pointed out in our original brief, a number of inferior courts have held the Federal Rules of Civil Procedure to be binding on the judges as well as the lawyers.

The question raised is one of tremendous importance to the trial bar because the Court of Appeals has held that for counsel to threaten to proceed in a trial court in compliance with rules prescribed by this Court constitutes a crime. The Government now says that all a lawyer can do in the face of the abrogation of any Federal Rule of Practice is to appeal, but in the instant case petitioner's client lost the right to assign error on the trial court's ruling because the Court of Appeals held that a proper offer of proof was not made by petitioner on the conspiracy issue. As we have pointed out in our original brief, any deficiency in the offer of proof was created by Judge Miner's unlawful order and this deficiency was utilized

by the Court of Appeals as a basis for affirming the trial court's dismissal of the case.

As stated by the late Mr. Justice Rutledge, the disobeying of an unlawful order does not constitute a crime nor does it constitute contempt "wherever the substantive rights asserted or the opportunity for exercising them would vanish with obedience to the challenged order." (*United States v. United Mine Workers of America*, 330 U. S. 258, 351-2 (1947).) Here, the Parmelee Company's substantive rights were foreclosed "without any possibility for their effective appellate review and determination."

The Supreme Court of California, in dealing with a similar statute, held that a lawyer's disregard of a judge's instructions to "keep seated and wait until the jury is out to make your objections" was justified because "under the circumstances of the case at bench petitioner, if not required to make, was at least justified in presenting, immediate objection to the hereinabove described procedure followed by the judge * * *." (*Cooper v. Superior Court*, 55 Cal. 2d 291, 359 P. 2d 274 (1961).)

Here, no one contends that Judge Miner had any right to overrule this Court and abrogate Rule 43(c). Even Judge Miner later conceded this when he said (R. III, 935):

> "* * * That in the absence of a stipulation, the cases as I read them require the presenting of a witness to ask him some questions, and when I decline to let him answer, then they can proceed with the offer of proof."

The Court of Appeals, in its majority opinion, points out that petitioner had a "right as well as his duty to firmly and respectfully advance plaintiff's claims and assert its rights. In so doing, he had as much right to be in the courtroom and to act as did the judge." (R. V, 62.)

It now appears that petitioner's right to make a proper offer of proof in accordance with rules promulgated by this Court was subject to the exception that if he did so he was guilty of contempt and could be sentenced to ten days in jail. Petitioner most respectfully suggests that a right which can only be exercised at the price of a jail sentence is a right which will be exercised by a very small proportion of the trial bar. Petitioner further most respectfully suggests that to uphold such a contempt order erodes "the fundamental interest of the public in maintaining an independent bar."

II.

PETITIONER ACTED IN GOOD FAITH AND EVEN IF THIS COURT DETERMINES THAT HE WAS WRONG IN BELIEVING THAT JUDGE MINER'S ORDER WAS UNLAWFUL, HE COULD NOT BE GUILTY OF CONTEMPT AS A MATTER OF LAW

The statute involved says in unambiguous language that petitioner could not be held in contempt for threatening to disobey an unlawful order. This Court has held in the *Nye* case, 313 U. S. 33, cited at page 19 in petitioner's original brief, that this statute is a limitation on any inherent power of federal courts to sentence a lawyer for contempt. Respondent can point to no case holding that an order by a trial judge abrogating a rule promulgated by this Court over the objection of opposing counsel can be or is lawful. The trial judge himself conceded that he had no power to enter such an order (R. III, 957). An appeal could not and, as we have pointed out, did not obviate the error and the damage done to the client's case.

Finally, the trial judge conceded that petitioner was acting in good faith when he said (R. III, 1109):

"I have never charged and do not charge now and

never will charge any bad faith in this case on the part of plaintiff's lawyers nor on defendants'."

As stated in the case of *Gallagher v. Municipal Court of the City of Los Angeles*, 31 Cal. 2d 784, 788, 192 P. 2d 905, 908-9 (1948), a "mere mistaken act by counsel cannot render him in contempt of court."

The wisdom of this ruling is apparent here because neither petitioner nor anyone else knows in any definitive way whether Judge Miner's abrogation of the rule was a lawful or unlawful order until after this Court has decided the issue. Certainly, the Government's counsel affords no help on the issue because no authority is cited as sustaining the position that even an unlawful order entered by a trial court while trying a lawsuit is a lawful order. If that contention can be true, there can be little point or purpose in the limitation by Congress on the power of a trial court to punish for contempt to disobedience of a "lawful order" and "none other".

In a footnote at the bottom of page 33 of its brief respondent concedes, "There can be no dispute that petitioner 'was entitled to proceed at least far enough for the record to show he was unequivocally stopped by the court'." Respondent however contends that petitioner was unequivocally stopped by Judge Miner prior to petitioner's remarks. The record fails to support the contention. See colloquy between court and counsel (R. II, 733-735). As stated by Circuit Judge Duffy, "Nevertheless, Mr. McConnell did comply with the Court's order. At that point there was no interference with the conduct of the trial. There was no obstruction in the administration of justice" (R. V, 70). Further, as pointed out by Judge Duffy, "It might be noted that counsel's vigorous insistence on preserving his client's rights bore fruit, as the trial judge later changed his ruling" (R. V, 69).

III.

THE REQUEST FOR AN APOLOGY AS A CONDITION FOR VACATING THE CONTEMPT SENTENCE WAS AN ILLEGAL CONDITION IN THE CONTEMPT ORDER.

Counsel for the Government says that the trial court had full control over its contempt order (Res. Br., 46) but overlooks the implication in the contention. Here, two specifications of contempt entered against petitioner were vacated because insufficient as a matter of law. If petitioner had apologized, he would have admitted guilt under an illegal charge or specification which apology was coerced by a jail sentence. The possible effect upon the career of a trial lawyer in such a situation is, we are sure, obvious to this Court. If this sort of coercion is possible, the legal profession is an exceedingly hazardous one and the Bill of Rights has little, if any, application to trial lawyers.

CONCLUSION.

For the reasons asserted here and in our original brief, the decision of the court below should be reversed.

Respectfully submitted,

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